

THE DIGEST

OF

INDIAN LAW REPORTS

A Compendium

OF THE RULINGS

OF THE HIGH COURT OF CALCUTTA FROM 1862

AND

OF THE PRIVY COUNCIL FROM 1831

TO 1876

BY

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PREFACE.

THIS work is put forth in the hope that it may supply a public want.

Conflicting rulings are shown, as far as possible, in juxtaposition, with a view to their future settlement authoritatively. Over-ruled decisions, in some cases, have been included partly for purposes of record and especially with a view to reconsideration. In like manner, and for nearly the same reasons, obsolete rulings in certain cases have been preserved. In a subsequent edition, much will have to be omitted as redundant, and the character of the work will then be less of a Compilation, and more of a Digest.

The present work is exclusively a Digest of the Law Reports of the High Court of Calcutta, except as to the Privy Council rulings on appeals from the other Presidencies. The Reports of the other High Courts have not been included in the present edition, nor have the Bengal Law Reports been referred to in the citations more frequently than has been done, owing to the Compiler's inability to get at them. The latter, however, can hardly be called an omission, for there is scarcely a case reported in the Bengal Law Reports which is not to be found in the Weekly Reporter. A new edition will comprehend the rulings in all the Presidencies.

The numbers of the rulings under each heading must be taken as they stand. Some of the rulings entered in the Digest were omitted too late to admit of a re-numbering without incurring the serious risk of falsifying the cross-references.

LIST OF WORKS REFERRED TO, WITH TABLE OF ABBREVIATIONS, ETC.

ABBREVIATIONS.	NAME OF WORK.
Agra H. C. Rep.	Agra High Court Reports.
B. L. R.	Bengal Law Reports.
Bombay H. C. Rep.	Bombay High Court Reports.
H. C. Rep. N. W. P.	N. W. P. High Court Reports.
Hay	Hay & Co.'s Reports (2 vols.).
Hyde	Hyde's Reports (2 vols.).
L. R.	Legal Remembrancer.
Marshall	Marshall's Reports.
P. C. R.	Sutherland's Privy Council Rulings, from 1831 to 1867.
R. J. P. J.	Revenue, Judicial, and Police Journal (4 vols.).
Sev.	Sevestre's Reports (from Aug. to Dec. 1863).
S. C. C.	Sutherland's Rulings by the Sudder Court and the High Court on References from the Mofussil Small Cause Courts, from Oct. 1861 to 1865.
W. R.	Sutherland's Weekly Reporter (26 vols.).
W. R. (Act X)	That portion of the particular vol. (denoted by the No. prefixed) of Sutherland's Weekly Reporter, which contained the Rulings of the High Court under Act X of 1859, when such Rulings were printed separately instead of being, as they were afterwards, incorporated with the Civil Rulings.
W. R. C. R.	So as regards Rulings of the High Court in Civil References under Special Acts.
W. R., Cr.	That portion of the Weekly Reporter which contained the Criminal Rulings of the High Court.
W. R., Mis.	So as regards the Rulings of the High Court on Miscellaneous Appeals, &c., when such Rulings were printed separately, instead of being, as they were afterwards, incorporated with the Civil Rulings.
W. R., O. J.	So as regards Rulings of the High Court on Appeals from Original Jurisdiction.
W. R. P. C.	So as regards Privy Council Rulings.
W. R., R. C.	So as regards Rulings of the High Court on References by Recorders' Courts.
W. R. S. C. C.	So as regards Rulings of the High Court on References by Small Cause Courts.
W. R. W. L. C.	So as regards Rulings of the High Court on References by Waste Land Courts.
W. R. F. B.	So as regards Full Bench Rulings of the High Court.
W. R. F. B. [*without a No. prefixed.*]	Sutherland's Special Number of the Weekly Reporter, containing Full Bench Rulings of the High Court from July 1862 to July 1864.
W. R. Sp.	Sutherland's Special Number of the Weekly Reporter, containing Rulings of the High Court from Jan. to July 1864.

Act IV stands for Act IV of 1840.

Act VIII stands for Act VIII of 1859.

Act X stands for Act X of 1859.

Act XIV stands for Act XIV of 1859.

F. B. before a reference denotes a Full Bench Ruling.

O. J. before a reference denotes a Ruling of the High Court on Appeal from Original Jurisdiction.

P. C. before a reference denotes a Privy Council Ruling.

Reports cited parenthetically contain the same ruling as the Reports to which the parenthesis is annexed.

ERRATA.

PAGE.

7. *For* "Act XI of 1858" *read* "Act XL of 1858."

20. *For* "S. 210. *See* Pardon 3" *read* "S. 210. *See* Pardon 2, 3."

33. *For* "Will 58" (in cross-references under "Ancestral Property") *read* "Will 51."

43. *Under* "Assam" *add* "*See* Rules of Practice 25."

47. *Under* "Attorney and Client" *add* "*See* Rules of Practice 22."

48. *For* "sherish" (in paragraph 42) *read* "sherishta."

52. *After* "4 W. R., P. C." (in paragraph 18) *insert* "page 46."

91. *For* "art. 11" (in paragraph 21) *read* "art. 12."

94. *Insert* "3" *before* "W. R., Cr., 29" (in paragraph 2, under "Culpable Homicide not amounting to Murder").

115. *For* "Reg XIX of 1873" (in paragraph 5 of "Ejectment") *read* "Reg. XIX of 1793."

263. *For* "mohurair" (in paragraph 138) *read* "mohurrir."

270. *For* "s. 378 C. C. P." (in paragraph 1 of "Limitation, Act LIII of 1860") *read* "s. 378 Act VIII."

" *Prefix* "1" to the first paragraph of "Limitation (Act IX of 1871)."

406. *Insert* "a" *before* "mokurrurec" (in paragraph 3 of "Rent").

449. *For* "in" *after* "Court, and" (in paragraph 143 of "Special Appeal") *read* "no."

450. *Insert* "they" *before* "cannot" (in paragraph 152 of "Special Appeal").

CORRECTIONS AND ADDITIONS

To be made in the several Vols. of the WEEKLY REPORTER indicated, in respect to citations of other Reports, so as to make the WEEKLY REPORTER, as far as possible, complete in itself and independent of other Reports.

VOL.	PAGE.	
XI.	548.	*For* "9 W. R." (p. 183) *read* "11 W. R."
" (Cr.).	11.	*For* "1 W. R., Cr., 2," *read* "7 W. R., Cr., 28."
XII.	6.	*For* "4 W. R." (p. 109, Mis. Rulings), *read* "6 W. R."
"	81.	*For* "2 W. R. (Act X Rulings) 31," *read* "3 W. R. (Act X Rulings) 21."
"	202.	*For* "9 W. R." (p. 1 Full Bench), *read* "11 W. R."
"	220.	*For* "p. 50" (4 W. R.), *read* "p. 30."
"	238.	*For* "9 W. R." (p. 20), *read* "11 W. R."
"	307.	*For* "page 62 of the same Volume," *read* "page 462" etc.
"	333.	*For* "page 2" (Civil Rulings, Vol. XI), *read* "page 201."
"	382.	*To* "Vol. VIII of the W. R." *add* "p. 128"; *and for* "p. 528" (Vol. VIII), *read* "p. 428."
"	458.	*The case in* "2 B. L. R. 49 F. B." *is also reported in* 11 W. R. (O. J.) 1.
"	498.	*For* "Section 12" (Act XIV of 1859), *read* "cl. 12 s. 1."
XIII.	304.	*For* "Act X" (of 1865 B. C.) *read* "Act VIII."
"	428.	*The case reported* "at p. 260 of the 5th Vol. of the Revenue, Judicial, and Police Journal" *is also reported in* 9 W. R. 463.
XIV.	335.	*For* "Reg. XIX of 1854" *read* "Reg. XIX of 1814."
	422.	*For* "14 W. R." (p. 40) *read* "11 W. R."
XV.	54.	*For* "p. 468" (12 W. R.) *read* "p. 462."
"	113.	*For* "p. 37" (13 W. R.) *read* "p. 67."
"	176.	*For* "p. 500" (6 W. R.) *read* "p. 300."
"	202.	*For* "p. 42" (11 W. R.) *read* "p. 422."
" (Cr.).	88.	(*foot-note*). *For* "12 W. R., Cr., 18" "13 W. R., Cr., 66."
XVI.	174.	*For* "p. 4" (10 W. R.) *read* "p. 41."
XVII.	89.	*For* "p. 459" (9 W. R.) *read* "p. 454."
"	114.	*For* "p. 368" (4 W. R.) *read* "p. 10."
"	265.	*For* "p. 331" (W. R. for 1864) *read* "p. 351."
"	281.	*For* "Section 321" (Criminal Procedure Code) *read* "Section 320."
XVIII.	465.	*For* "p. 50" (8 W. R.) *read* "p. 15."
"	470.	(*foot-note*) *For* "12 W. R." (P. C. 24) *read* "13 W. R."
"	526.	*For* "p. 144" (13 W. R.) *read* "p. 414."
"	531.	*For* "p. 77" (13 W. R.) *read* "p. 177."
" (Cr.).	19.	*For* "14 W. R." (p. 49) *read* "12 W. R."
XIX.	19.	*For* "17 W. R." (p. 79) *read* "16 W. R."
"	169.	*For* "Act XIV (B. C.) of 1865" *read* "Act VIII (B. C.) of 1865."
"	179	(*foot-note*) *For* "5 W. R., P. C., 39" *read* "6 W. R., P. C., 43."
"	180.	*For* "p. 357" (Spl. No. of the W. R.) *read* "p. 57."
"	181.	*For* "12 Moore's I. A. (12 W. R., P. C., 21" *read* "3 Moore (6 W. R., P. C., 43)."
"	225.	*The Privy Council case of* "Mussamut Bahuns Koonwur *v.* Lalla Baharee Loll" *is reported in* 18 W. R. 157.
XX.	33.	*The Privy Council case erroneously referred to as reported* "in 13 W. R. 47" *is probably reported in* 18 W. R. 76.
"	77.	*For* "p. 248" (2 W. R.) *read* "p. 148."
"	208.	*For* "p. 163" (16 W. R.) *read* "p. 153."
"	270.	*For* "p. 176" (19 W. R.) *read* "p. 178."
"	337.	*For* "6 W. R. 18" *read* "8 W. R. 15"; *and to* "9 W. R." *add* "p. 61."
"	415.	*For* "p. 980" (11 W. R.) *read* "p. 280."
"	426.	*For* "p. 193" (15 W. R.) *read* "p. 143."
"	432-3.	*For* "Act XI" (of 1858) *read* "Act XL."
XXI.	80.	*For* "p. 182" (19 W. R.) *read* "p. 282."
XXII.	13.	*For* "9 W. R." (p. 141) *read* "19 W. R."; *and for* "p. 126" (20 W. R.) *read* "p. 186."
"	498.	*The Privy Council case in* "9 Moore's I. A. 516" *is also reported in* 3 W. R., P. C., 41.
"	528.	*The decision erroneously referred to as* "dated the 3rd of July 1874" *is dated the* 30th July 1874 *and reported in* 22 W. R., p. 391.
" (Cr.)	25.	*For* s. 315" (Act X of 1872) *read* "s. 215."
XXIII.	9	(*foot-note*). *Insert* "14" *before* "W. R., P. C., 11."
"	302.	*The Privy Council decision* "in 14 Moore's I. A." *is also reported* in 17 W. R. 459.
"	309	(*foot-note*). *For* "11 W. R." (F. B. 8) *read* "12 W. R."
"	317.	*The Privy Council case of* "Sreenarayan Mittra decided on the 15th January 1873" *is reported in* 19 W. R. 133.
"	317 (also XXIV. 13).	*The Privy Council case of* "Fyz Ali Khan decided on the 22nd January 1873" *is reported in* 19 W. R. 171.

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XXIII.	318. *The Privy Council case* "of the Rajah of Pachete decided on the 15th December 1874" *is reported in* 19 W. R. 150.
"	321. *The case in* "8 Sevestre 277" *is also reported in* 2 Hay 608.
"	366, 398 (also XXIV. 276, 281),—*The Privy Council case of* "Hunooman Pershad Panday" (6 Moore's I. A.) *is reported in* 18 W. R. 81 (foot-note).
"	400. *The* "Full Bench decision of 7th June 1867" *is reported in* 8 W. R. 15.
"	402 (*marginal note*). *For* "12 W. R. 23" *read* "11 W. R. 23."
"	406. *For* "p. 501" (12 W. R.) *read* "p. 504."
"	409. (*foot-note.*) *For* "1 W. R." (p. 69) *read* "21 W. R."
"	410. *The Privy Council case* 'in 4 Moore 292;" *is also reported* in 7 W. R., P. C., 44.
"	414 (also XXV. 356). *The Privy Council case* "in 11 Moore's I. A. 75" *is also reported* in 8 W. R. P. C., 1.
"	414. *The Privy Council cases in* "13 Moore's I. A., pp. 113 and 497" *and* in L. R. 1 I. A. 55," *are also reported respectively in* 12 W. R., P. C., 40; 14 W. R., P. C., 33; and 21 W. R. 214.
XXIV.	1. *For* "Joint Hindoo family" *read* "Mahomedan family;" *and for* "p. 184" (22 W. R.) *read* "p. 185."
"	13. *The Privy Council decision* "delivered on the 10th February, 1875, *is reported in* 23 W. R. 314.
"	103. *The case in* "8 B. L. R. p. 180" *is also reported in* 16 W. R. 235.
"	109. *The Privy Council decision herein referred to is reported in* 17 W. R. 459.
"	187. *The decision of the Officiating Chief Justice dated* "the 8th April last," *is reported in* 23 W. R. 438.
"	190. *For* "Reg. VIII of 1873" *read* "Reg. VIII of 1793;" *and for* "22 W. R." (pp. 439 and 443) *read* 21 W. R.
"	193. (*marginal note*). *For* "s. 23" (Act XXIII of 1861) *read* "s. 11."
"	195. *The decision in* "1 B. L. R. 138" *is also reported in* 10 W. R. 62; *and for* "p. 260" (22 W. R.) *read* "p. 160."
"	214. *For report of rehearing of this case see* 25 W. R. 378.
"	255. *The case in* "9 B. L. R." *is also reported in* 22 W. R. 496.
"	256. *The Privy Council cases in* "13 Moore's I. A. 333" *and* "9 Moore's I. A. 539" *are reported respectively in* 13 W. R., P. C., 21 *and* 2 W. R., P. C., 31.
"	304 (also XXV. 2). *The Privy Council case of* "Soorjo Monee Doyee" *is reported in* 20 W. R. 377.
"	304. *The Privy Council case of* "Ooma Tara Debia" *is reported in* 18 W. R. 163.
"	305. *For* "p. 200" (14 W. R.) *read* "p. 209."
"	369. *The case in* "3 B. L. R. O. C. J. 7" *is also reported in* 11 W. R. O. J. 21.
"	383. *The case referred to in the beginning of this judgment as* "the last" *is reported at* p. 387 *post.*
"	387. *For* "20 W. R. 436" *read* "23 W. R. 438."
"	395. (*last line*) *The vol. of Hay's Reports here referred to is* Vol. II.
"	396. *The Privy Council case in* "6 Moore's I. A. 550" *is also reported in* 4 W. R., P. C., 114; *and for* "14 W. R." (p. 409) *in the foot-note,*" *read* 22 W. R.
"	419. *For* "p. 171" (15 W. R.) *read* "p. 807."
XXIV.	441. *For the case* "Special Appeal 84 of 1875" *see* p. 412 *ante.*
"	445. *The case referred to as* "the only case cited" *is reported in* 11 W. R. 550.
"	449. *The Privy Council case in* "14 Moore's I. A. 152" *is also reported in* 20 W. R. 459.
"	452. *For* "Sections 246 and 247" (Act VIII of 1859) *read* "Sections 256 and 257."
"	475. *The case in* "p. 18, 1 Wyman's Reports, S. C. C. R." *is also reported in* 5 W. R., S. C. C., 5.
" (Cr.)	9. *The case in* "1 B. L. R., Cr., 7" *is also reported in* 10 W. R., Cr., 16.
XXV.	51 (*foot-note*). *For* "p. 291" (12 W. R.) *read* "p. 47."
"	99. *The Privy Council case of* "Ishen Chunder Singh *v.* Shyama Churn Bhutto" *is reported in* 6 W. R., P. C., 57.
"	157. *The Privy Council case in* "10 Moore's I. A." *is also reported in* 3 W. R., P. C., 19.
"	203. *The Privy Council case of* "Girdharee Loll *v.* Kantoo Loll" *is reported in* 22 W. R. 56.
"	210. *The Privy Council case in* "14 Moore's I. A. 152" *is also reported in* 20 W. R. 459; *and for* "p. 152" (3 W. R.) *read* "p. 182."
"	226. *The judgment here appealed from is reported in* 24 W. R. 319.
"	239 (*foot-note*). Ditto, ditto, 15 W. R. 549.
"	240. *The Privy Council case in* "8 Moore's I. A. 500" *is reported in* 2 W. R., P. C., 59.
"	241. *And that in* "11 Moore's I. A. 619" *in* 2 W. R., P. C., 61.
"	243. *The Privy Council cases in* "4 Moore's I. A." *and in* "13 Moore's I. A. 472" *are reported respectively in* 7 W. R., P. C., 67 *and in* 14 W. R., P. C., 11.
"	255 (*marginal note*). *For* "contracting father" *read* "contracting parties."
"	286. *The* "Full Bench" *decision here referred to is reported in* 12 W. R. F. B. 1.
"	287. *The* "Division Bench" *decision here referred to is reported in* 14 W. R. 339.
"	288. *The Privy Council decision in* "L. R. 1, Indian Cases, 167" *is also reported in* 21 W. R. 318.
"	289. *For* "p. 83" (12 W. R.) *read* "p. 483."
"	301. *The* "Ramnad" *case is reported in* 10 W. R., P. C., 17.
"	330. *For* "28 W. R." (p. 548) *read* "22 W. R."; *and for* "22 W. R." (p. 440) *read* "23 W. R."
"	331. *For* "p. 449" (23 W. R.) *read* "p. 440."
"	341. *The Privy Council case in* "9 Moore's I. A." *is also reported in* 4 W. R., P. C., 114; *and the case in* "4 B. L. R. O. C. J. 40" *is reported in* 12 W. R., O. J., 18.
"	379. *For report of previous hearing of this case see* 24 W. R. 214.
"	406. *The Privy Council case in* "12 Moore's I. A. p. 523" *is also reported in* 12 W. R., P. C., 21.
"	429. *Those in* "11 Moore's I. A. pp. 468 *and* 22" *are reported respectively in* 9 W. R., P. C., 9, *and* 6 W. R., P. C., 57.
"	458. *For the judgment here appealed from see* p. 180 *ante.*
"	504. *The case in* "8 B. L. R. App. 95" *is also reported in* 17 W. R. 274.

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XXV.	520.	*The Privy Council rulings in* "15 B.L.R. 106" *and* "L. R. [illegible], I. A. 85" *are also reported respectively in* 23 W. R. pp. 314 *and* 150.
"	549.	*And that in* "10 Moore 563" *is reported in* 5 W. R., P. C., 91.
"	551.	*For* "p. 165" (17 W. R.) *read* "p. 161."
" (Cr.)	5.	*For* "s. 221" (Act X of 1872) *read* "s. 222."
"	7.	*The case in* "1 Ben. O. C. p. 41" *is also reported as a foot-note in* 18 W. R., Cr., 44.
"	15.	*For* "s. 391" (Act X of 1872) *read* "s. 491."
XXV.	55.	*For* "p. 75." (5 W. R.) *read* "p. 80."
"	77.	*The cases in* "3 B. L. R. 76" *and* "9 B. L. R. 229" *are also reported respectively in* 15 W. R., Cr., 42, *and* 18 W. R., Cr., 11.
XXVI.	31.	*The Privy Council case in* "3 Moore's I. A. 316" *is also reported in* 6 W. R., P. C., 52.
"	51.	(*marginal note*) *For* "absolute jurisdiction" *read* "absolute *defect of* jurisdiction."

DIGEST OF INDIAN LAW REPORTS.

Abatement.

1. A sued B for possession of land, and C intervened alleging that A was his benameedar. On the death of A, B having purchased his interests in the property from his widow and representative, prayed for the — of the writ, and his prayer was allowed on the ground that any question of secret trust claimed by third parties could not be tried in this case.—2 Hay 133.

2. In a suit to recover the rent for a talook, the defendant is entitled to set up, by way of answer, that a portion of the land has been washed away by a river, and that he is entitled to an — in respect of that portion, without being obliged to bring a distinct suit for —.—2 Hay 661 (Marshall 558).

3. A suit for — by talookdars, in such a case as the above, is cognizable under Act X of 1859, independently of s. 18.—*Ib.* *Quære* as to proprietors of talooks created before the permanent settlement.—16 W. R. 279.

4. In such a suit, measurement papers prepared by the Revenue authorities in a case between Government and the talookdar in respect of a share belonging to Government in the zemindaree of the zemindar, are not admissible as evidence against the latter, they being *res inter alios acta.*—*Ib.*

5. In a suit for —, butwarra papers are no evidence against the ryot who was no party to those proceedings.—1 R. J. P. J. 101.

6. The right to claim — is not confined to ryots with right of occupancy.—1 R. J. P. J. 105 (Sev. 76).

7. Plaintiff cannot obtain a higher — of rent than he has demanded, even though such higher — be according to defendant's own allegation.—1 R. J. P. J. 109 (Sev. 76*a*).

8. A tenant, with or without a right of occupancy, is entitled to — of rent for land washed away, unless precluded by the terms of his kubooleut from claiming such —.—W. R. Sp. (Act X) 19 (2 R. J. P. J. 204).

9. The death of an appellant is no ground for the — or postponement of a case continued by an agent and not prejudiced.—W. R. Sp. (Act X) 47 (2 R. J. P. J. 212). Nor is the death of a plaintiff a ground for the — of a suit.—17 W. R. 475. It is most irregular to allow a suit to go on nominally against a dead man.—25 W. R. 17.

10. A suit for — of jumma and refund of excess rents paid on account of diluviated lands is cognizable by the Revenue Court under cl. 3 s. 23 Act X of 1859.—W. R. Sp. (Act X) 64 (2 R. J. P. J. 307).

11. The right of action, when a diluvion takes place, accrues from the time when the plaintiff is compelled to pay the rent named in his pottah without the allowance of the — claimed by him.—*Ib.*

12. A decree allowing an — of rent for the only year for which the order could then be passed, does not prevent the same redress being applied to any anterior period, on the question arising.—W. R. Sp. (Act X) 103 (3 R. J. P. J. 75).

13. In a suit for — of rent in respect of a portion of a putnee tenure taken by Government for railway purposes, from the time when the land was so taken down to the period of plaintiff's relinquishment of his putnee, it having appeared that the land was taken, the rent paid, and the putnee resigned before Act X of 1859, that Act was held not to apply to the case.—W. R. Sp. (Act X) 121.

14. A claim by defendant for — of rent under remission granted by Government to plaintiff may be tried in a suit for arrears.—1 W. R. 84.

15. — of rent cannot be claimed on the ground that plaintiff has been dispossessed of part of his land by any other than his landlord.—1 W. R. 209 (3 R. J. P. J. 272).

16. In a suit for arrears of rent, — for lands washed away may be claimed by defendant, but the *onus probandi* is on him.—2 W. R. (Act X) 27 (4 R. J. P. J. 58).

17. A howaladar has a right to sue for — of rent.—2 W. R. (Act X) 65.

18. A lease providing for enhancement if the lands are found on measurement to exceed the quantity stated in the lease, does not necessarily give the right to — if the lands are found to be less than stated.—2 W. R. (Act X) 71.

19. A contract providing for an — of the rent of an ijara, in the event of diminution of the rents, affords no ground for an — owing solely to the ijaradar's negligence to collect the rents.—3 W. R. (Act X) 10.

20. A suit for possession of certain lands with mesne profits does not abate by reason of those lands having since been washed away.—5 W. R. 227.

21. In a suit for rent, a claim for — may be made, by way of set-off, in respect of land taken up by Government for the purposes of a road.—6 W. R. (Act X) 24. And so in respect of land taken by Government for railway purposes.—16 W. R. 207. *See* 13 *ante.*

22. A previous rent suit, which can only decide the question of liability to rent, is not *res judicata* in a suit for — on the ground of decreased area.—6 W. R. (Act X) 93.

23. A suit for — of rent will not lie where the relation of landlord and tenant is not admitted.—8 W. R. 518.

24. In a suit for arrears of rent, where plaintiff, after allowing an — on defendant's allegation that a dacoity had taken place in her house, claimed full rents on finding, from the judgment in the dacoity case, that no dacoity had taken place, it was held that the judgment in the dacoity case was admissible in evidence to ascertain the truth of plaintiff's case, and that, even if plaintiff could resile from his grant of —, he could not do so without giving defendant notice of his intention.—9 W. R. 246.

25. A talookdar was held entitled to — on the ground that he is not liable to be assessed at the same rate as a ryot.—9 W. R. 592. *See* 9 W. R., P. C., 3.

26. A lease given by a landlord implies sufficient title to support it, and guarantees the tenant quiet possession and enjoyment, so as to entitle the tenant, when evicted under the paramount title of a third party from a part of his tenure, to — of rent.—10 W. R. 120.

27. The real meaning of s. 18 Act X is that the grounds for which an — of rent may be claimed by a ryot must have resulted from causes beyond his control.—11 W. R. 291.

28. A tenant may set up, against a claim for rent for any particular year, any right which he has to an —, notwithstanding that he has paid full rent for several previous years.—16 W. R. 201.

29. Even though a pottah provides for — if on measurement the land is found to be less than a certain quantity, yet if the lessee comes to be in possession of that less quantity by his own default and not that of the lessor, he is not entitled to an — of rent.—17 W. R. 418.

30. A ryot who has held his land for a few months and has paid no rent, cannot sue for — on the ground that the land on measurement appears less than the quantity mentioned in his pottah.—17 W. R. 449.

31. On what grounds — of rent may be claimed under s. 18 Act VIII of 1869, B. C.—21 W. R. 404, 25 W. R. 89.

32. A plea of — can be adjudicated upon in a suit for arrears of rent with as much facility as in a suit for — of rent.—22 W. R. 117.

33. In a suit for arrears of rent of land adjacent to a river where defendant claims — on account of diluvion, and it is found that the agreement under which he holds requires measurement to be made once in three years, no account being taken of accretion or decretion occurring within that period, if the tenant has waived his right of

ABATEMENT (*continued*).

measurement and has held over, it must be presumed that he elects to continue to hold at the same jumma as before, and his claim to — cannot be allowed.—24 W. R. 326.

See Abatement of Suit or Appeal.
Ejectment 73, 95.
Enhancement 145, 228, 242, 270.
Evidence (Estoppel) 71, 180.
Jurisdiction 54, 276, 292, 297, 380.
Khas Mehals 8.
Landlord and Tenant 5, 7.
Land taken for Public Purposes 4.
Limitation 225, 287.
Occupancy 8, 10, 12.
Pottah 9.
Practice (Execution of Decree) 25.
Putnee Talook 19, 25, 44, 102, 109.
Refund 1.
Representative 1.
Splitting Cause of Action 15, 16.

Abatement of Suit or Appeal.

See Abatement 19, 20.
Contribution 30.
High Court 100.
Practice (Parties) 21.
Principal and Agent 37.
Representative 1.

Abduction.

1. A charge of — will not lie under s. 366 Penal Code, when the woman being of mature age herself wishes to become a prostitute.—1 W. R., Cr., 45 (4 R. J. P. J. 119).

2. Nor will a charge of — lie against a mother to whom her minor child found his way back after he had been delivered up in Court to the custody of his father.—25 W. R., Cr., 35.

See Arrest 10.
Kidnapping 2.

Abetment.

1. — of murder is a wrong finding when two accused were principals in the first degree, and it is only uncertain who actually struck the blow.—1 W. R., Cr., 49 (4 R. J. P. J. 122).

2. Conviction of a police inspector for — of false charge of murder quashed for want of proof of *mala fides*.—2 W. R., Cr., 10.

3. Persons punished as principals cannot also be punished for — of the same offence.—4 W. R., Cr., 23, 37.

4. Where certain persons who abetted an assault in the course of which murder was committed, were held guilty of — of grievous hurt, and not — of murder.—5 W. R., Cr., 75.

5. The Excise Act XXI of 1856 contains no provision for the offence of —.—7 W. R., Cr., 53.

6. Nor the Post Office Act XIV of 1866.—7 W. R., Cr., 54.

7. Under s. 109 Penal Code, the — must be of an offence punishable under the Code, and not under a distinct and special law.—*Ib.*

8. Under s. 94, Act XX of 1866, an abettor may be punished more severely than his principal can be.—8 W. R., Cr., 16.

9. Where, of several persons constituting an unlawful assembly, some only are armed with sticks, and one of them (A) is not so armed but picks up a stick and uses it, B (A's master), who gave a general order to beat, is guilty of — of the assault made by A.—12 W. R., Cr., 51.

10. What acts of subsequent — are contemplated by s. 108 Penal Code.—18 W. R., Cr., 28.

11. In order to convict a person of —, it is not only necessary to prove his participation in those stages of the transaction which are innocent, but to connect him with those stages of the transaction which are criminal.—20 W. R., Cr., 41.

12. The offence of — by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.—21 W. R., Cr., 8.

13. Where the accused was charged under s. 116 Penal Code, with — an offence punishable under s. 161, the person abetted having been a Civil Surgeon of a sudder station,—*Held* that the enhanced punishment prescribed by the latter part of s. 116 could not be awarded, as the Civil Surgeon was not a public servant within the meaning of that section.—21 W. R., Cr., 9.

14. Where a head constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, he was held guilty of — under Expl. 2, s. 107, Penal Code.—21 W. R., Cr., 11.

15. Where a blow is struck by A in the presence and by the order of B, both are principals in the transaction.—23 W. R., Cr., 11.

16. To prove — under s. 107 Penal Code, by "illegal omission," it must be shown that the accused intentionally aided the commission of the offence by his non-interference.—24 W. R., Cr., 26.

See Assault 1.
False Evidence 48.
Forgery 18.
Hookumnamah 1.
Illegal Gratification 3.
Jurisdiction 427, 450.
Marriage 6.
Master and Servant 9.
Murder 19.
Suttee 1, 2.
Theft 8, 9, 14.
Torture 1.
Wrongs and Remedies 4.

Abkaree.

See Excise 1, 2, 3.
Fine 17.

Absconding Offender.

1. Ss. 183 and 184 Act XXV of 1861 do not apply to offences punishable with imprisonment extending to 6 months only.—3 W. R., Cr., 34.

2. There is no rule which requires a Magistrate to satisfy himself that a party has absconded before issuing a proclamation; but the party, on suing to recover his property under s. 185, may prove that he had not absconded.—*Ib.* *See also* 9 W. R., Cr., 27. But *see* 5 *post.*

3. Forfeiture of property of an —, who appears within 2 years, should not be carried into effect until after a regular enquiry into the cause of his absence.—3 W. R., Cr., 63.

4. A warrant addressed to a police officer to apprehend an offender and to bring him before the Magistrate, is not "a summons, notice, or order" within the meaning of s. 172 Penal Code; and the offence of absconding by an offender against whom a warrant has been so issued, is not punishable under that section.—5 W. R., Cr., 71. *See* 9 W. R., Cr., 70.

5. Procedure by Magistrate before declaring forfeiture of property of — under ss. 183 and 184 Act XXV of 1861.—6 W. R., Cr., 73, 79; 19 W. R., Cr., 12.

6. Ss. 183 and 184 Act XXV make no provision for any investigation by a Magistrate of the claims of third parties to property which has been attached. The claimants are not bound by the sale, and may sue the purchasers in the Civil Court to establish their title.—7 W. R., Cr., 35. *See also* 17 W. R., Cr., 10; 23 W. R., Cr., 30.

7. An order striking off a case on account of the little prospect of bringing the guilty parties to trial, cannot dispose of the question of contempt of court arising out of the fact of the accused having absconded to evade justice.—7 W. R., Cr., 40.

ABSCONDING OFFENDER (*continued*).

8. The proper remedy of claimants to attached property belonging to an — is by a civil suit. The plea of informality can be considered on the surrender of the fugitive. Caution against sale until the needful formalities are carried out.—17 W. R.; Cr., 10.

9. Property declared under s. 184 Act XXV to be at the disposal of Government, can only be restored by Government.—18 W. R., Cr., 33.

10. The period of 30 days prescribed by s. 183 as the minimum period within which the person is to be required by the proclamation to appear, runs from the date on which the publication is effected.—19 W. R., Cr., 12.

11. The declaration of forfeiture directed by s. 184, if not made before the person affected has come in or has been brought in, ought not to be made at all.—*Ib.*

12. S. 327 Act X of 1872, which permits the deposition of a witness to be taken in the absence of an —, does not apply to a deposition taken before that Act was passed.—21 W. R., Cr., 12.

13. Where s. 327 applies it should be shown that, when the former deposition was taken, the accused had absconded, and after due pursuit could not be arrested.—*Ib.*

See Sale 117.

Abuse.

Injury might result to a man's feelings from —, such as would entitle him to damages.—6 W. R. 151, 8 W. R. 256. *See* 18 W. R. 531.

See Damages 96, 101.
Jurisdiction 189, 407.

Accomplice.

See Adultery 2.
Evidence (Corroborative) 2, 10, 11.

Account.

1. Payment on — is ineffectual in reviving a claim without a written acknowledgment under s. 4 Act XIV of 1859.—S. C. C. 92.

2. It is unnecessary to prove the correctness of every single item of an — extending over 7 years, when the correctness of any one item is not denied.—W. R. Sp. 174. *See also* 11 W. R. 3.

3. In a suit for an —, plaintiff's failure to prove the statement made in his plaint, that he had sanctioned an estimate which had been exceeded, does not render his suit liable to dismissal, unless defendants can show that they were neither servants nor contractors.—7 W. R. 367.

4 In a suit for an — under s. 24 Act X against a naib who pleads acquittance, and that he is not the naib of some of the estates, the Judge should find what estates are in his management, and for what period, and what account he has to render.—9 W. R. 250.

5. In a suit for a sum of money on an unadjusted —, plaintiff filed a memorandum (A) with her plaint, from which the amount claimed in the plaint could not be made out. In her examination by the Court, plaintiff put in another memorandum (C), to explain memorandum A. Defendant admitted that memorandum C was signed by him. It had reference to a period immediately preceding that from which the suit was brought.—*Held*, that memorandum C was rather evidence to support the originally-stated cause of action, than an amendment of the claim in the substitution of one claim or cause of action for another. The case was one which should have been decided, not merely on the discrepancy between the two statements made by plaintiff, but on the whole of the evidence.—(P. C.) 14 W. R., P. C., 24.

6. The mere omission of an accountable party framing his own — to carry forward into a new — a balance against himself existing in a former —, can constitute no evidence in his own favor. To prove the existence of the balance, such omission might be considered in conjunction with other evidence in the case.—(P. C.) *Ib.*

7. Where a decree requires the judgment debtor to render accounts, he can only — for moneys that have come into his hand.—15 W. R. 260.

8. In a suit for — of moneys received and disbursed, it was held that, to release D, who was jointly employed with defendant as manager of plaintiff's shop on payment of a small sum, and to sue defendant alone for a large amount, was most inequitable, and that the suit should be dismissed.—19 W. R. 14.

9. Held also that, as plaintiff filed his khatta books and did not allege that they had been falsified, he should balance the — himself, and that the Lower Court ought not to depute an ameen under s. 181 Act VIII to investigate the —.—*Ib.*

10. Where two parties having dealings think it necessary to inspect the state of the — between them, and the debtor inspects the books of the creditor and signs them in acknowledgment of what is due from him, he may be sued on such settlement of — without a bond executed on stamp paper.—19 W. R. 246.

11. In a suit for an — it is not sufficient for the Court to decree that an — should be taken; but the — should be examined and settled, and, if not produced, opportunity should be afforded for establishing a claim for compensation.—22 W. R. 388.

12. Procedure to be observed in a judicial inquiry into accounts.—24 W. R. 70.

13. Defendant was held bound by an — made up in accordance with the course of dealing which had practically been assented to by him and been followed between the parties for many years.—24 W. R. 390.

See Ameen 21.
Certificate 45, 47.
Co-sharers 8.
Court Fees 11.
Dower 23, 25, 30.
Endowment 74.
Evidence 82, 83.
,, (Documentary) 14, 42, 60, 78, 102, 125, 126.
,, (Oral) 21.
Executor 2.
Fraud 18.
Guardian 12, 15.
High Court 154.
Hindoo Law (Coparcenary) 12, 61, 64, 96.
,, Widow 76.
Indigo 9.
Interest 75, 82.
Joinder of Causes of Action 18.
Jurisdiction 14, 17, 28, 48, 260, 272, 285, 392.
Limitation 18, 25, 26, 79, 167, 177, 201, 202, 208, 232.
,, (Act X of 1859) 19.
,, (Act XIV of 1859) 6, 75, 89, 128, 132, 143, 152, 265, 266, 270, 302, 306, 328, 330.
,, (Act IX of 1871) 27, 32, 36, 43.
Mesne Profits 61.
Minor 4, 10, 20, 29.
Mortgage 2, 5, 11, 20, 26, 37, 40, 51, 55, 89, 92, 93, 98, 154, 162, 185, 222, 223, 254, 256, 287, 300.
Onus Probandi 197, 266, 271.
Partition 7c.
Partnership 3, 16, 18, 22, 24, 27.
Pilgrims 1.
Practice (Appeal) 88, 100.
,, (Attachment) 3.
,, (Execution of Decree) 160, 252.
Principal and Agent 33, 45, 56.
Putnee Talook 7.

ACCOUNT (*continued*).

See **Res Judicata 81**
Sale Law (Act XI of 1859) 6, 20.
Set-off 14, 15.
Small Cause Court 5.
Special Appeal 130, 144, 164.
Stamp Duty 85, 91.
Vendor and Purchaser 2*a*.
Zur-i-peshgee Lease 2, 7, 13, 16.

Accused.

1. Magistrate bound to file any explanation that an — may make.—2 W. R., Cr., 58 (4 R. J. P. J. 366).

2. Examination of —, how to be recorded, certified, and used under ss. 205 and 366 Act XXV of 1861.—7 W. R., Cr., 49; 8 W. R., Cr., 55; 12 W. R., Cr., 44; 13 W. R., Cr., 63; 14 W. R., Cr., 9, 10; 15 W. R., Cr., 63, 68, 83. And under s. 346 Act X of 1872.—20 W. R., Cr., 50; 24 W. R., Cr., 54.

3. An — person should be described in the calendar by name and not by number.—7 W. R., Cr., 53.

4. Examination of — under s. 266 Act XXV of 1861.—9 W. R., Cr., 62.

5. Examination of — left to discretion of Magistrate.—10 W. R., Cr., 25. Not incumbent where a written defence is tendered in a case under Chap. XV Act XXV of 1861.—16 W. R., Cr., 63.

6. Examination of — by magistrate under ss. 202 and 250 Act XXV of 1861 in cases under Chaps. XII and XIV, but not in cases under Chap. XV.—12 W. R., Cr., 77; 14 W. R., Cr., 76; 19 W. R., Cr., 49.

7. A magistrate should state how an — was warned before he made his statement.—14 W. R., Cr., 81.

8. The discretion of a magistrate under s. 202 Act XXV of 1861, to ask questions of an —, is entirely unfettered, though an examination under that section should not be of an inquisitorial nature, and a magistrate should inform the — that he is not bound to answer. Answers to questions under that section are admissible in evidence, even if the magistrate has omitted to warn the — that he need not answer.—16 W. R., Cr., 21. *See* 19 W. R., Cr., 49.

9. The identification of an — after the evidence for the prosecution has been completed, is not legally sufficient if made by witnesses not on their oaths at the time.—18 W. R., Cr., 33.

10. The award of compensation to — persons cannot be made in warrant cases but only in summons cases.—20 W. R., Cr., 59; 22 W. R., Cr., 12.

11. An — is entitled to have conveyed to him by the process (whether summons or warrant) the same amount of information relative to the accusation made against him, specifying not only the technical designation of the offence, but the acts for which the — would have to answer.—24 W. R., Cr., 58.

See **Absconding Offender 12, 13.**
Adjournment 1.
Conviction 8.
Deputy Magistrate 3.
Detention 1, 2, 3, 4, 5.
Discharge.
Evidence 37, 47, 49, 65, 77.
,, (Admissions and Statements) 14, 15, 16, 19, 20, 23, 26, 29, 30, 34, 37, 48, 50, 53, 54, 55.
,, (Oral) 30.
High Court 20.
Irregularity 14, 18.
Practice (Criminal Trials) 1*a*, 2, 15, 20, 23, 44, 47, 58, 59, 67.
Purdah Women 6.
Recognizances 15.
Rioting 10.
Summons 17.
Witness 19, 35, 45, 46, 58, 59, 71, 85, 86.

Acquiescence.

1.—by judgment-debtor in a third party's claim, without fraud against judgment-creditor, is no bar to a suit against such third party.—2 W. R., 3.

2. It is not the practice of the Courts in India or of the Privy Council to press against either an infant or a Hindoo female a presumption by — in a rival claim from the mere non-contestation for a limited time of an adverse title.—(P. C.) 17 W. R. 1.

3. In a suit for declaration of title under a pottah under which plaintiffs had been in possession since it was granted in 1843, defendants were held by their — for 12 years to have concluded themselves from questioning the pottah as illegal and beyond the Collector's power to grant.—18 W. R. 57.

4. The doctrine of — does not apply in India to cases in which the period within which a suit may be brought is laid down by statute.—22 W. R. 267.

See Account 13.
Ancestral Property 14.
Auction Purchaser (Revenue Sale) 18.
Building 1, 8, 13.
Compromise 4.
Conveyance (Transfer and Assignment) 15.
Co-sharers 52.
Gift 26.
Hindoo Law (Adoption) 21.
,, ,, (Alienation) 8, 23.
,, ,, (Coparcenary) 90.
,, Widow 40, 70, 75.
Jurisdiction 20, 148.
Landlord and Tenant 17, 41.
Minor 13.
Mortgage 195, 261, 274.
Onus Probandi 164.
Practice (Parties) 12.
Putnee Talook 45, 88.
Ratification 3.
Rent, 33, 116.
Right to Light and Air 6.
Sale Law 5.
Watercourse 2.

Acquittal.

1. Act XXV of 1861 gives no power to interfere where a prisoner has been acquitted.—6 W. R., Cr., 83. So also under Act X of 1872.—19 W. R. 55, 21 W. R., Cr., 21. *But see* 23 W. R. 170.

2. The order for the release of the accused as *nirdosh* (guiltless) was held to be an — and not a discharge, and therefore to have exempted the accused from a second trial for the same offence.—18 W. R., Cr., 10. *See also* 21 W. R., Cr., 41.

See Amends 9.
Appellate Court 15.
Autrefois Acquit.
Discharge 1, 3.
High Court 32*a*, 136, 156, 170.
Jurisdiction 243.
Murder 15, 21.
Practice (Criminal Trials) 1, 8, 35.
Principal and Surety 27.
Recognizance 1, 7.
Right of Property 8.
Withdrawal of Complaint 2.

Act VIII of 1835.

See Sale 11, 98, 102, 104, 109, 141.
Sale Law 9.

Act X of 1836.

s. 3. *See* Indigo 11, 14.
Limitation (Act XIV of 1859) 105.

Act XXV of 1837.

s. 8. *See* Appeal 12.
Practice (Execution of Decree) 70.

Act XI of 1838.

See Partition (Butwarra) 18, 25.

Act XXV of 1838.

See East Indian 1.

Act XXXII of 1839.

See Interest 13, 30, 31, 52.

Act IV of 1840.

s. 3. *See* Attached Property 10.
Onus Probandi 1.

See Boundary 1.
Damages 8.
Evidence 3, 42, 66, 86.
Evidence (Estoppel) 2, 100.
Julkur 9, 17.
Jurisdiction 131.
Land Dispute 7.
Limitation 11, 41, 96, 97, 199.
,, (Act XIII of 1848) 17.
,, (Act XIV of 1859) 16, 21, 72, 192, 231, 311.
Onus Probandi 11, 72, 85, 244.
Possession 16.
Possessory Award 1, 2, 3, 4.
Practice (Possession) 42.
Trespasser 2.

Act V of 1840.

See False Evidence 15.
Witness 26.

Act I of 1841.

See Pre-emption 46.

Act XII of 1841.

s. 22. *See* Declaratory Decree 1.

See Sale Law 18.

Act XIX of 1841.

s. 2. *See* Registration 6.
s. 3. *See* Curator 2.
s. 18. *See* ,, 3.

See Appeal 48.
Curator 1.
Hindoo Widow 74.
Land Dispute 30.
Limitation 30.
,, (Act XIV of 1859) 9, 44, 84, 158.

Act XX of 1841.

See Certificate 4, 10, 15, 22.

Act XXI of 1841.

See Jurisdiction 21, 160.
Nuisance 1.

Act III of 1843.

See Special Appeal 32

Act XIX of 1843.

s. 2. *See* Registration 6, 11.

See Registration 5, 13, 16, 18, 23, 33.
Vendor and Purchaser 15, 18.

Act XX of 1844.

See Factors 1.

Act I of 1845.

s. 9. *See* Mortgage 181.
Sale Law (Act I of 1845) 1.
s. 20. *See* Auction Purchaser (Revenue Sale) 3.
Benamee 22*a*.
Sale Law (Act I of 1845) 2.
s. 21. *See* Auction Purchaser (Revenue Sale) 10.
Benamee 14, 22*a*.
Hindoo Law (Coparcenary) 88.
Sale Law 18.
,, (Act I of 1845) 3, 4, 7.
s. 24. *See* Mortgage 95.
Reversioner 8.
s. 26. *See* Auction Purchaser (Revenue Sale) 8.
Churs 10.
Embankment 1.
,, cl. 3. *See* Auction Purchaser (Revenue Sale) 6
,, cl. 4. *See* Enhancement 74.
Junglebooree Tenure 4.

See Sale Law (Act I of 1845).

Act I of 1846.

s. 7. *See* Pleader 11.

Act X of 1846.

See Jurisdiction 22.

Act I of 1847.

See Boundary 15.
Jurisdiction 82.

Act IX of 1847.

s. 6. *See* Churs 72.
s. 9. *See* ,, 84.

See Churs 25, 37.

Act XIII of 1848.

See Limitation 20.
,, (Act XIII of 1848).

Act XXI of 1848.

See Time Bargain 1.

Act VI of 1849.

See Practice (Attachment) 58.

Act IX of 1850.

s. 27. *See* Small Cause Court 32.
s. 32. *See* „ „ 44.
s. 58. *See* „ „ 42.
See Small Cause Court 6.

Act XIII of 1850.

See Practice (Criminal Trials) 45.

Act XVIII of 1850.

See Damages 81, 87.
Municipal 11.
Jurisdiction 468.

Act XXI of 1850.

s. 8. *See* Marriage 15.
See Forfeiture 17.

Act VIII of 1851.

s. 6. *See* Toll 1, 2, 4.
See Toll 8.

Act XVII of 1852.

See Civil Procedure Code 1.

Act XVIII of 1852.

See Pleader 5, 14.

Act XIX of 1853.

s. 26. *See* Witness 87.

Act VI of 1854.

See Civil Procedure Code 1.

Act XVIII of 1854.

s. 11. *See* Railway 2.

Act II of 1855.

s. 4. *See* Nazir 8.
s. 6. *See* Evidence (Documentary) 94.
s. 8. *See* „ „ 94.
s. 13. *See* „ „ 69.
s. 14. *See* „ 59.
s. 23. *See* Witness 57.
s. 24. *See* Attorney and Client 13.
Evidence 64.
s. 28. *See* Bond 4.
Evidence (Corroborative) 1.
„ (Oral) 16.
State Offences 2.
s. 31. *See* Evidence (Corroborative) 5.
s. 34. *See* Witness 67.
s. 43. *See* Evidence (Documentary) 4, 47.
s. 47. *See* „ 4.
s. 48. *See* „ 44.
Witness 4.
s. 57. *See* Evidence 46, 57.
s. 58. *See* „ (Documentary) 72.

Act VI of 1855.

See Mortgage 97.

Act XII of 1855.

See Representative 2.
Wrongs and Remedies 1.

Act XXVIII of 1855.

s. 2. *See* Interest 78, 99.
See Interest 70.

Act XXXVII of 1855.

See Appeal 190.

Act XII of 1856.

See Nazir 1.

Act XV of 1856.

s. 2. *See* Marriage 23.
s. 5. *See* „ 23.
See Hindoo Widow 92.

Act XXI of 1856.

s. 43. *See* Excise 2, 4.
s. 44. *See* Practice (Amendment) 31.
s. 48. *See* Excise 6.
Practice (Amendment) 31.
s. 53. *See* Opium 1.
s. 90. *See* Excise 6.
See Abatement 5.
Excise 1, 3.
Fine, 17.
Opium 2.

Act III of 1857.

s. 13. *See* Cattle Trespass 1.
s. 14. *See* „ „ 4.
s. 17. *See* „ „ 2.
See Cattle Trespass 3.

Act VI of 1857.

s. 39. *See* Land taken for Public Purposes 2.
See Land taken for Public Purposes 9, 14.
Right of Way 5.

Act XI of 1857.

See Forfeiture 5, 20.

Act XIII of 1857.

s. 26. *See* High Court 119.

Act XIV of 1857.

See Forfeiture 5.

Act XXV of 1857.

s. 2. *See* Forfeiture 8.
s. 3. *See* „ 20.
s. 7. *See* „ 19.
s. 9. *See* „ 3, 8, 22.
See Forfeiture, 1, 7, 18.
Rent 16.

Act XXV of 1858.

See Interest 45.

Act XXXV of 1858.

s. 2. *See* Lunatic 15.
s. 8. *See* ,, 18.
s. 9. *See* ,, 9.
s. 11. *See* ,, 7.
See Insanity 5.
Lunatic 4, 10, 11, 16, 17, 18, 19, 21, 24, 25, 28, 29.

Act XI of 1858.

s. 3. *See* Certificate 8, 9, 19, 59, 60.
Guardian 9, 25.
Limitation 148.
Minor 8, 28, 43.
s. 5. *See* Certificate 93.
s. 6. *See* ,, 71.
Manager 12.
s. 7. *See* Certificate 45, 47, 55, 57, 102.
Court of Wards 8.
Minors 5, 29.
s. 9. *See* Certificate 102.
Jurisdiction 495.
s. 10. *See* Certificate 102.
s. 11. *See* ,, 102.
s. 12. *See* ,, 77, 102.
Jurisdiction 89, 304, 413.
Manager 6.
Minor 35, 45.
s. 14. *See* Court of Wards 2.
s. 16. *See* Guardian 15
s. 18. *See* Lease 79.
Mortgage 278.
Sale 224.
Summary Order 1.
s. 19. *See* Certificate 47.
Minor 4.
s. 21. *See* Certificate 45, 47, 77, 87, 92, 97.
Guardian 15.
Minor 4.
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„ (Act XIII of 1848).
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„ (Act XIV of 1859).
„ (Act LIII of 1860).
„ (Act IX of 1871).
„ (Reg. III of 1793, s. 14).
„ (Reg. II of 1805).
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Suit on Document.
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Value of Goods.
Vendor and Purchaser.
Waste 1, 3.

Adavi Palki.

See Jurisdiction 123.

Adhikaree.

1. The Hindoo law does not prevent a woman from being an —.—3 W. R. 179.

2. In determining the right of succession to the office of —, where the custom or rule of succession was in question, previous judgments or decrees involving instances in which the right and custom had been successfully asserted were held admissible as evidence under s. 13 Act I of 1872.—20 W. R. 345.

Adjournment.

1. In a trial held under Chap. XV Act XXV of 1861, it is not an irregularity to adjourn the trial under s. 269 for the purpose of allowing the accused to secure the attendance of his witnesses.—16 W. R., Cr., 21.

2. The dismissal of a case for default (after repeated unnecessary adjournments) upon a day to which no legal — was made, was declared illegal.—16 W. R., Cr., 68.

3. Where an — was applied for on the first day after the Judge's return to the district that the applicant really had an opportunity of appearing before the Judge for the purpose of filing documents and producing witnesses,—*Held* that the Judge ought, under s. 146 Act VIII, to have granted an —.—18 W. R. 325.

4. Where — is made by a Court to give effect to its processes for compelling the attendance of witnesses (being thus made as much on its own motion at the instance of the defendant as at the instance of the plaintiff), the case cannot be said to come under s. 148 Act VIII, which contemplates a case where a party has obtained time to produce his witnesses and has failed to do so.—19 W. R. 34.

5. A previous order for an — regularly made under s. 146 Act VIII, unless shown to have been regularly and properly rescinded, stands good, and the Court has no power to decide the case on any other day than that to which the hearing was so adjourned.—20 W. R. 2.

6. Where plaintiffs tell the Court that their principal witness has not been summoned, though they had ample time to ensure his attendance, but gave no definite facts showing whether or not the witness is evading service, and their application is not verified by oath or solemn affirmation, the Court is not justified in granting an —.—20 W. R. 243.

7. Where defendant had known for some time previously that his case was coming on, and what evidence was necessary, a medical certificate to the effect that he was confined to his bed by lumbago was held to be no sufficient ground for an—.—(O. J.) 24 W. R. 202.

8. A Court ought not to adjourn a case for the production of a document; much less (when it does so) to allow witnesses and several of the parties who were interested in the result, to be recalled and to add to and vary the evidence which they had previously given, in order to prove a case which they had not set up.—(P. C.) 26 W. R. 55.

See Costs 104.
Discharge 6.
Ex-parte Judgment or Decree 8.
High Court 8, 92.
Issues 1.
Joinder of Parties 29.
Pleader 6.
Postponement.
Practice (Suit) 22, 51, 60.
Remand 28.
Summons 11.
Written Statement 1.

Adjustment.

1. According to s. 206 Act VIII of 1859, no — made out of Court is admissible by the Court in execution. —W. R. Sp., Mis., 38; 2 W. R., Mis., 2, 43; 4 W. R., Mis., 11, 21; 7 W. R. 134, 9 W. R. 362, 20 W. R. 150.

2. The *bona fides* of an — made prior to Act VIII will have to be considered.—2 W. R., Mis., 2.

3. S. 206 Act VIII was held to apply to the execution of a decree passed before the Act came into operation.—2 W. R., Mis., 43.

4. An — with one of several decree-holders, without the knowledge or consent of the others, is not binding on them.—*Ib.*

5. S. 206 Act VIII is not appplicable to decrees under Act X of 1859.—3 W. R. (Act X) 7 (4 R. J. P. J. 389). *See also* 8 W. R. 449, 9 W. R. 372. *But see* 22 W.R. 204.

6. On the transfer of a decree by sale after attachment, any — in fraud of the purchaser, or of the attachment under which the sale took place, cannot defeat or affect the purchaser's rights.—3 W. R., S. C. C., 10 (S. C. C. 140).

7. The suing on a kistbundee in Court does not necessarily make it the instrument of a public — through the Court within the meaning of s. 206 Act VIII.—7 W. R. 485.

8. A letter from a decree-holder to his vakeel desiring him to certify to the Court, is not an — under s. 206.—7 W. R. 510.

9. According to s. 206, evidence of an — out of Court ought to be rejected.—8 W. R. 319. *See* 18 W. R. 520.

10. Where a decree-holder expressly promised to certify to the Court payments made out of Court, a suit for damages was held to lie against him for breach of such promise.—9 W. R. 210. *See also* 11 *post.*

11. A payment by a judgment-debtor to an officer of the Court arresting him under a warrant, is an — through the Court within the meaning of s. 206.—9 W. R. 462.

12. Where a decree-holder, seeking to execute his decree, was opposed by the judgment-debtor on the ground of the latter having become the purchaser of it at a sale in execution of another decree,—*Held* that these proceedings amounted to an — out of Court, which, under s. 206, could not be recognised unless certified to the Court by the judgment-creditor himself.—10 W. R. 354.

13. A petition signed and filed in Court by a judgment-creditor certifying payment of the amount due to him by the judgment-debtor is a sufficient certificate of payment under the decree within the meaning of s. 206 Act VIII.—12 W. R. 358.

14. Where a judgment-debtor makes a payment to the decree-holder out of Court in satisfaction of his decree, and the decree-holder, disregarding such payment and failing to certify such payment to the Court, executes and realizes the amount of his decree, the judgment-debtor can sue the decree-holder for refund of the money originally paid by him under the —, s. 206 Act VIII and s. 11 Act XXIII of 1861 notwithstanding.—(F. B.) 13 W. R., F. B., 69, 20 W. R. 150, 22 W. R. 270. *See* 19 W. R. 152.

15. A letter written by a decree-holder to the judgment-debtor, after realizing a portion of the decree and stating that the former released the latter from the rest of the decree, is not the certification of an — within the meaning of s. 206 Act VIII.—15 W. R., O. S., 5.

16. Under s. 206 Act VIII a debtor under a money decree can *at any time* bring the amount of his decree into Court to be paid to the judgment-creditor; and by analogy any person against whom there is a decree for the delivery of moveable or immoveable property, may make satisfaction with the knowledge of the Court in such a way as circumstances will admit of.—18 W. R. 520.

See Damages 59.
Evidence (Estoppel) 42.
,, (Oral) 2.
Injunction 10.
Instalments 18.
Jurisdiction 19.
Limitation 174.
Minor 10.
Partnership 16, 22.
Release 8.
Specific Performance 4, 12.

Administration.

1. A Judge was held not to have exercised an unwise discretion in rejecting the claim of a brother to be a co-administrator to an intestate's estate when it was in evidence that the intestate had stated that he had to receive money from his brother (the applicant), although such statement was not in legal evidence.—10 W. R. 90.

ADMINISTRATION (*continued*).

2. The Recorder's Court has power to grant letters of —, or letters of — with a will annexed, to the estate and effects of a native of British India, but must, in granting such letters, be guided by the law of inheritance or succession of such native.—11 W. R. 413.

3. In a suit by a co-heir for — and division of the estate of a deceased person, plaintiff is entitled to have an account of the entire personal estate and to follow the property into the hands of any person who has misappropriated it; and such right is not taken away by the fact that another co-heir holds a certificate under Act XXVII of 1860.—13 W. R. 443.

See Administrator General.
Appeal 178.
Certificate.
Court Fees 11.
Court of Wards 3, 8.
High Court 154.
Jurisdiction 65, 356.
Letters of Administration.
Recorders 5.
Small Cause Court 44, 45.
Succession 2.
Will 21, 22.

Administrator-General.

Procedure by — to appear for a deceased appellant.—15 W. R. 58.

Admiralty.

See Arrest 1.
Bottomry Bond 2.
Jurisdiction 69, 75.

Admission.

1. Where defendant admitted liability to a portion of plaintiff's claim but pleaded payment, it was incumbent on the Judge, instead of dismissing plaintiff's claim, to investigate whether defendant's admitted liability had been discharged or not.—1 Hay 1.

2. Where defendants admitted tenancy but pleaded payment and their plea of payment was found to be false,—*Held* that a decree should have been passed at the rates admitted by them, instead of dismissing plaintiff's whole claim because he failed to prove the rates stated in the *kuggut*.—W. R. Sp. (Act X) 11 (2 R. J. P. J. 81). *See* (F. B.) 21 W. R. 208, 22 W. R. 256.

3. The rule that, when an — is relied on, it must be taken in its entirety, does not apply to pleadings.—W. R. Sp. 305 (L. R. 85).

4. In an action for a certain sum, on plaintiff's failure to prove his entire claim, a decree may be given for a smaller amount in accordance with defendant's acknowledgment.—(P. C.) 5 W. R., P. C., 58 (P. C. R. 74). *See also* 5 W. R. (Act X) 65; 6 W. R. 132.

5. — by non-traverse. *See* Evidence (Admissions and Statements) 5; Practice (Suit) 39; Written Statement 12.

6. Whilst a plaintiff is entitled to a decree for such sums as the defendant admits, the defendant also has a right to the Judge's opinion upon the evidence which he adduces in support of his plea of payment.—18 W. R. 331.

7. An — of a fact on the pleadings by implication is not an — for any other purpose than that of the particular issue, and is not tantamount to proof of the fact.—(P. C.) 23 W. R. 214.

See Confession.
Dismissal of Suit or Appeal 6.
Enhancement 114.
Evidence (Admissions and Statements).
Fraud 14.

See Kubooleut 1, 20, 24.
Limitation 78, 81, 118.
" (Act XIV of 1859) 17, 115, 171, 172.
" (Reg. III of 1793, s. 14) 5*a*.
Onus Probandi 3, 26, 40, 95, 125, 235, 258.
Payment 11.
Principal and Agent 57.
Rent 26, 43, 47, 96.
Special Appeal 152.
Will 2.

Adoption.

See Gift 19.
Hindoo Law (Adoption).
Judgment 13.
Mahomedan Law 14.
Parsees 1, 2, 3.

Adultery.

1. A person convicted of — under s. 497 Penal Code, need not be convicted also under s. 498; far less where there is no taking or enticing away of the woman.—2 W. R., Cr., 35.

2. A person may call the woman with whom he is accused of having had sexual intercourse as a witness on his behalf.—6 W. R., Cr., 92.

3. Neither s. 27 Act XXV of 1861 nor s. 65 Act X of 1872 applies to a case in which there is a sole charge of —.—19 W. R., Cr., 31.

4. In a case of —, sexual intercourse must be proved, but it is not necessary that there should be direct evidence of an act of —, nor that the adulterer should know whose wife the woman is, provided he knew she was a married woman.—21 W. R., Cr., 13.

5. The legality of a conviction of — before a jury was held not affected by the fact that the charge was triable, under s. 497 Penal Code, with assessors, and not by a jury.—21 W. R., Cr., 18.

6. *Quære.* Is the formal assent of a husband to a charge of — added at the end of his deposition, a proper compliance with s. 478 Act X of 1872?—*Ib.*

See Culpable Homicide (not amounting to murder) 8.
Husband and Wife 10.

Advancement.

The English doctrine of — is applicable in India as between a father and daughter, both of English extraction and living under English law. The *status* of the daughter, under an alleged *boná fide* purchase made by her father for her — when a minor, cannot be set aside except by clear and positive proof that the father merely made use of her name as he would that of any servant or stranger, retaining the beneficial interest in the property for himself. The subsequent sale of the property by the father acting as guardian and trustee for the minor does not divest him of his character as trustee, or itself prove that the purchase in the name of the minor was not *boná fide*.—2 W. R. 141.

See Benamee 17.

Adverse Possession.

1. A putneedar, taking an ijara from a lakherajdar, cannot, by omitting to collect rent, cause — to grow up on his part against the lakherajdar.—20 W. R. 315.

2. The occupation of land by Government, without payment of rent, cannot be construed as — against the zemindar.—25 W. R. 102.

See Co-sharers 21, 63*a*.
Costs 35.

ADVERSE POSSESSION (*continued*).

See Distraint 6.
Ghatwals 11.
Hindoo Law (Coparcenary) 5, 29, 95.
,, ,, (Inheritance and Succession) 70.
,, Widow 79, 86, 87, 96.
Husband and Wife 44.
Khas Mehals 2.
Landlord and Tenant 16, 19, 21, 46.
Limitation 8*a*, 8, 40, 50, 68, 73, 90, 126, 138, 137, 153, 164, 200, 209, 218, 244.
,, (Act XIV of 1859) 187, 226, 228.
Maintenance Grant 2.
Mokurruree Tenure 3.
Mortgage 32, 48, 76.
Onus Probandi 155, 194.
Possession 5*a*, 10, 27.
Practice (Attachment) 4*a*.
Prescription 3.
Registration 4.
Right of Way 22.
Survey 3.
Waste Land 2, 8.

Advocate.

Where the Privy Council reversed an order of a High Court suspending an — from practice.—(P. C.) 17 W. R. 35.

See Barrister 1.
Contempt of Court 2.
High Court 18, 94.
Pleader 15, 35.
Practice (Criminal Trials) 47, 60.
,, (Motions) 1.
Recorders 3, 7, 10.
Special Appeal 42.

Affidavit.

See Ex-parte Judgment or Decree 28.
Oath or Affirmation 1.
Small Cause Court 35

Affirmation.

See Oath or Affirmation.

Affray.

Punishment for defensive party in an — respecting land ending fatally.—1 W. R., Cr., 34.

See Culpable Homicide (not amounting to murder) 1.
Murder 30.
Obstruction 7.
Right of Private Defence 3.
Rioting 9.
Unlawful Assembly 4.

Agent.

See Agent to the Governor-General.
,, ,, ,, (S. W. F.)
Broker.
Commission Agent.
Decree 9.
Del Credere Agent.
Factors.
Gomashta.
Law Agent.
Mookhtar.
Naib.
Principal and Agent.
Revenue Agent.
Tehseeldar.

Agent to the Governor-General.

See Jurisdiction 301.

Agent to the Gov.-General S. W. Frontier.

See Jurisdiction 2.

Agreement.

See Contract.
Ikrarnamah.

Air.

See Right to Light and Air.

Alienation.

See Cause of Action 11.
Conveyance (Transfer and Assignment).
Endowment 38.
Ghatwals 6.
Hindoo Widow.
Lease 22.
Mahomedan Law 25, 26.
Onus Probandi 60.
Partition 4.
Reversioner 13, 14, 16.
Surburakaree Tenure 1.
Zur-i-peshgee Lease 3.

Allonge.

See Securities (Government) 6.

Alluvion.

See Churs.

Alternative Finding.

1. An — is perfectly legal.—7 W. R., Cr., 13.
2. The power "to pass judgment in the alternative" given by s. 381 Act XXV of 1861, to what cases applicable.—11 W. R., Cr., 37; 12 W. R., Cr., 11.

See Dismissal of Suit or Appeal 22.
False Evidence 19, 27, 49.
Title 19.

Amanut Lands.

Their history given.—W. R., Sp. 30.

Amaram Grants.

Resumption and assessment of —.—(P. C.) 4 W. R., P. C., 121 (P. C. R. 300). *See* 14 W. R., P. C., 28.

Ameen.

1. Report of — in what cases valuable, and in what not. —W. R. F. B. 39 (1 Hay 263). *See also* 17 W. R. 282.

AMEEN (*continued*).

2. The report of an — is legal evidence.—Sev. 210; 9 W. R. 494.

3. The rejection as evidence of the report of an — upon the ground that it was founded upon forged chittas, was held to be wrong, because, even admitting that the documents were altered, the alterations were not such as to benefit any of the parties interested in this suit.—Sev. 718.

4. The value of the report of an — under s. 180 Act VIII depends upon the evidence on which it is founded.—3 R. J. P. J. 339.

5. The report of an — may be partially adopted.—1 W. R. 93.

6. Time for making objections to report of — with reference to s. 180.—1 W. R. 254 (3 R. J. P. J. 326), 6 W. R. 130, 7 W. R. 140, 8 W. R. 9, 9 W. R. 267.

7. The report of an — is evidence without any specific documents corroborating his finding.—2 W. R. 278, 6 W. R. 51, 7 W. R. 43. *But see* 8 W. R. 464.

8. The *onus* is on the defendants to impeach, and not on the plaintiffs to call evidence to support, a report of an —. —2 W. R. (Act X) 1.

9. What weight should be attached in a suit for enhancement to the report of an — as to neighbouring rates.—5 W. R. (Act X) 54. *See also* 9 W. R. 83, 12 W. R. 138.

10. Charges against a Civil Court — (such as can be readily enquired into, and their truth either disproved or proved) should be fully enquired into.—8 W. R. 172.

11. The report of an — and the depositions taken by him are admissible as evidence under s. 180.—8 W. R. 267, 287; 9 W. R. 596, 601; 10 W. R. 312; 11 W. R. 423; 12 W. R. 136; 17 W. R. 270; 22 W. R. 456. *See* 21 W. R. 280.

12. The examination by an — should be confined to points to be determined by local *inspection* only.—9 W. R. 83. And only to the points to which the commission referred.—14 W. R. 493, 21 W. R. 280. Specification of the points to which the investigation should be directed. —17 W. R. 473 (*foot-note*), 21 W. R. 281 (*foot-note*). Not into enquiries as to dates of dispossession.—16 W. R. 294. Nor into title and possession.—17 W. R. 469, 25 W. R. 65.

13. There are no limits to the powers conferred by s. 180 Act VIII on an — for the purpose of making an investigation.—9 W. R. 566.

14. The proceedings of a Civil Court — in a sub-division where he has no jurisdiction, are not legal evidence.—10 W. R. 153.

15. A Judge's order dismissing a Civil Court — for receiving an illegal gratification was set aside on the ground that the Judge had recorded in his order that the evidence given before him would not be sufficient to convict the — of that offence in a criminal trial.—13 W. R. 116.

16. The investigation of an — is no evidence against a party absent therefrom.—14 W. R. 373. Nor against a minor who was not properly represented.—23 W. R. 342.

17. Where the map of an —, which professed to show the *daghs* of a *hustabood chittah*, was not questioned by either party,—*Held* that it was not open to the Court to question its correctness.—14 W. R. 391. *See also* 17 W. R. 521.

18. The depositions of witnesses taken under a local investigation, are not admissible as evidence under s. 180 Act VIII without the report of the —.—14 W. R. 397.

19. The High Court has no authority to interfere in the case of a person who is not confirmed in the acting appointment of Civil Court — for which the Judge considers some other candidate to be more fit.—17 W. R. 226.

20. The report of an — based on a copy of a *kubooleut* is little or no evidence of title.—17 W. R. 473 (*foot-note*), 21 W. R. 280 (*foot-note*).

21. An investigation of accounts by an — under s. 181 Act VIII does not include the taking of the deposition of witnesses; and such depositions are not legally admissible in evidence.—19 W. R. 14.

22. The report of an — is not void *ab initio* because it is based on *butwarra* and resumption proceedings which had been referred to him for comparison with the land in dispute.—19 W. R. 213.

23. The High Court set aside an order passed on the report of an — where no notice had been given to one of the parties of the day fixed for hearing objections.—21 W. R. 2.

24. The depositions taken by an — may be read as evidence when the case comes back to the Court again.—22 W. R. 350. *See also* 22 W. R. 450.

25. A Court has no power to delegate to an — the trial of one of the most important issues of fact in a case.—23 W. R. 286.

26. Where a Court considers it necessary to order an enquiry by an — into the existence and value of moveable properties, such enquiry cannot be left to be made after decree, but must be made before the final decree is drawn up.—23 W. R. 422.

27. Where the duties of an — are expressly confined to a comparison of the land with the *chittahs*, any evidence taken by him contrary to his instructions cannot be looked at.—24 W. R. 208.

28. A Lower Appellate Court was held to have erred in law in taking an —'s report and map as its sole guide, and making them the sole basis and foundation of its decision to the total disregard of the other evidence on the record.—24 W. R. 338.

29. If a Lower Appellate Court finds an —'s report deficient on any point, it can send for that officer and examine him; but unless it sees reason to disbelieve his statements, or to differ from his conclusions as to the matter under investigation, it must take those conclusions into serious consideration, and if it rejects them where they were accepted by the first Court it ought to give reasons for differing from that Court.—24 W. R. 342.

See Account 9.
Appeal 175.
Boundary 2, 19.
Costs 81.
Enhancement 98, 100.
Evidence (Documentary) 51.
Interest 65.
Land Dispute 47.
Measurement 30.
Mesne Profits 111.
Nazir 1.
Partition (Butwarra) 18, 22, 26.
Plaint 20.
Practice (Commissions) 2, 12.
,, (Execution of Decree) 2, 19.
,, (Possession) 4, 55.
Privy Council 83.
Public Policy 2.
Special Appeal 28, 62.
Stamp Duty 55.
Survey 11.

Amendment.

See Practice (Amendment).

Amends.

1. S. 270 Act XXV of 1861 applies only to complaints made under Chap. XV in cases punishable with imprisonment not exceeding 6 months, 50Rs. being the measure of compensation awardable from any complainant, irrespective of the number of accused persons.—8 W. R., Cr., 54. *But see* 5 *post*.

2. Where a Magistrate is dealing with a charge which he has the power to dispose of finally under Chap. XV, although the charge, as originally laid, fell under Chap. XIV he has a discretion to award — under s. 270.—10 W. R., Cr., 48.

3. Where a complainant prefers three charges of three distinct offences, two of which are offences triable under Chap. XV, and one under Chap. XIV, a Magistrate may award — to the accused under s. 270 if he considers the charge with reference to the cases under Chap. XV. to have been vexatious.—13 W. R., Cr., 39.

4. S. 270 does not apply to a complaint under a special law (*e.g.*, s. 33 Act VII of 1864 B. C.).—14 W. R., Cr., 36.

5. Since the passing of Act VIII of 1869, a Magistrate may under s. 270, in a case in which more than one person has been accused, award compensation not exceeding 50Rs. to each person.—14 W. R., Cr., 75.

AMENDS (*continued*).

6. A mistake by a judicial officer does not render him liable for compensation under s. 270 Act XXV of 1861.—15 W. R. 506.

7. A Magistrate may, under s. 270 Act XXV of 1861, order complainant to make — to the accused, notwithstanding that the complainant is committed to take his trial for false evidence.—15 W. R., Cr., 9.

8. An award of compensation under s. 270 Act XXV of 1861 was set aside as illegal in a case of criminal force and theft or robbery, because the charge was in part one of theft or robbery which did not come under Chap. XV and because criminal force really was used.—18 W. R., Cr., 6.

9. Where a formal charge has been drawn up and the accused tried and acquitted, the acquittal should be one under s. 220 Act X of 1872, and not under s. 211, and therefore no — can be awarded to the accused under s. 209 in such a case.—22 W. R., Cr., 12.

10. Procedure to be followed by Magistrate in making an order for compensation under s. 209 Act X of 1872.—23 W. R., Cr., 64.

See Accused 10.
Defamation 8.
Fine 4, 16.
Housebreaking by Night 8.
Theft 1.
Unlawful Compulsory Labor 1.
Wrongful Confinement 2.

Analogous Cases.

See Consolidation of Cases.
Practice (Appeal) 8, 84.
,, (Suit) 48, 55.

Ancestral Property.

1. According to Hindoo law, a man's property is liable for his debts, which must be satisfied before the heir can be said to have interest in it.—W. R. Sp. 277 (L. R. 60).

2. Where a decree is obtained against an heir for a debt of the ancestor, and another decree for a personal debt, and the property is sold in execution of the latter, such sale, though prior to a sale in execution of the former decree, does not give the purchaser a preferential right in the property.—*Ib.*

3. Definition of —.—*See* Hindoo Law (Inheritance and Succession) 6, 34.

4. According to Hindoo law, a creditor cannot follow the property of a deceased debtor, but may hold the heir personally liable.—2 W. R. 296. So likewise both as regards Mahomedans and Hindoos.—12 W. R. 177.

5. Shares in — may be sued for, whether they are held jointly or separately.—3 W. R. 108.

6. According to the Mitacshara, — cannot be burdened with the debts of one of its joint owners after his decease.—3 W. R. 210.

7. The mere change of possession of — will not protect the property from liability to sale in execution of a decree or an ancestral debt, but the property may be proceeded against in whosever hands it may be.—3 W. R., Mis., 21.

8. According to the Mitacshara, sons have a vested interest in —, which interest is saleable at any time in execution of claims against them.—5 W. R. 54. *But see* 16 W. R. 31.

9. What it is incumbent on plaintiff to show in a suit to enforce his right to a share in immoveable property on the ground that it is —.—6 W. R. 170.

10. According to the Mitacshara law, property purchased by a father in possession of — as manager for himself and his sons, from the profits of such —, is itself —.—6 W. R. 256.

11. According to the Mitacshara, a son has an equal right with his father in —. He can compel the father to divide it during his lifetime, and will not be bound by any alienation made after his birth without his consent unless under legal necessity. If the father, during the son's minority, alienated any property in fraud of his creditors, such fraud would not bind the son, who was neither a party nor a privy to such fraud.—7 W. R. 502. *See next case. See also* 25 W. R. 497.

12. According to the Mitacshara law, a son acquires by birth a right in —, and can during his father's lifetime compel a partition of such property. The father cannot, without the son's consent, alienate the property except for sufficient cause; and the son may not only prohibit the father from so doing, but may sue to set aside the alienation if made. The cause of action to the son accrues when possession is taken by the purchaser. A new cause of action does not accrue, upon the subsequent birth of a younger brother, either to the elder brother alone, or to him and his brother jointly.—(F. B.) 8 W. R. 15. *See* 10 W. R. 273, 12 W. R. 446, 14 W. R. 386, 16 W. R. 31, 22 W. R. 17, 214, 23 W. R. 418.

13. A son under the Mitacshara law is entitled jointly with his father, from the moment of his birth or *adoption*, to — and also to the profits accruing after his birth.—8 W. R. 455, 11 W. R. 436. So also under the Mithila law, as expounded by the Vivada Chintamoni, and supplemented when deficient by the Mitacshara.—9 W. R. 469 (*reversed by P. C.*), 22 W. R. 56.

14. Under the Mitacshara law a son is entitled to recover his ancestral estate from a purchaser from the father, without refunding the purchase-money or any part thereof, upon proof that there was no such necessity as would legalize the sale and that he never acquiesced in the alienation.—(F. B.) 9 W. R. 511, 12 W. R. 446, 15 W. R. (F. B.) 6, 20 W. R. 120. *But see* 13 W. R. 30.

15. Under the Mitacshara law a father has no power to settle — by conveyance in his lifetime or by a will to take effect after his death, without the consent of all his sons living at the time. Where such a settlement is not assented to by the sons living at the time, and another son is afterwards born, no subsequent assent of the former will be binding on the latter.—11 W. R. 480.

16. The principle of the Mitacshara law, that if a father recover — which had been taken away by a stranger, and not recovered by the grandfather, he need not share it against his inclination with his sons, was held to apply *a fortiori* where the property would have been irrecoverably lost to the family, but was re-purchased by a member who was at the time solely entitled, and who advanced the money out of his self-acquired property.—14 W. R. 34.

17. The objection that a sale of — was effected without the consent of all the members of a joint Hindoo family, can only be made by the member who did not consent.—14 W. R. 80.

18. The fact that a settlement was made in the name of an elder son, and that he has continued to be solely registered from that time to this, affords no conclusive evidence against the title of the younger brother in property which was once the property of the father. The mere fact that one of the brothers was registered, so as to be the proprietor to the outer world, is not material if there has been a continuous enjoyment of the property by both brothers upon equal terms.—(P. C.) 15 W R., P. C., 10.

19. A son was held entitled to a decree in a suit brought by him to recover certain property sold in execution of a decree against his father, on the ground that he and his father being members of a joint family under the Mitacshara law, the purchaser of the father's rights could obtain nothing.—20 W. R. 174. *See also* 22 W. R. 214.

20. Under what circumstances a judgment-creditor who had become the purchaser of a father's rights and interests in property pledged by the father's bond, and sold in execution of a money decree on the bond, is entitled to demand a partition of the property between the father and his sons, so as to make the property available for being appropriated and retained by the creditor to the extent of the father's potential rights.—*Ib. See also* 20 W. R. 192.

21. Under the Mitacshara (as well as the Mithila) law, — which descends to a father is not exempt from liability to pay his debts because a son is born to him, unless the debt is illegal or has been contracted for an immoral purpose, in which case the son may not be under any pious obligation to pay it.—(P. C.) 22 W. R. 56. *See also* 23 W. R. 365, 395; 24 W. R. 231, 274, 364; 25 W. R. 148, 185, 202, 311. Attending *nantches*, and occasionally giving *nantches*, cannot be considered immorality absolving from such obligation.—23 W. R. 260. Nor is a high rate of interest a ground for invalidating the debt.—24 W. R. 421. A

ANCESTRAL PROPERTY (*continued*).

question of liability of this sort cannot be tried in execution proceedings, but must form the subject of an independent suit.—23 W. R. 265, 24 W. R. 364. The fact that one member of the family is separate in residence and mess in no way affects his position as to the — until a separation in estate has taken place.—25 W. R. 116.

22. A purchaser of joint — under an execution is not bound to go back beyond the decree to ascertain whether the Court was right in giving the decree, or, having given it, in putting up the property for sale in execution.—(P. C.) *Ib.* *See also* 23 W. R. 260, 424; 24 W. R. 281.

See Arbitration 33.
Evidence (Estoppel) 37.
Forfeiture 11, 22.
Gift 26, 33.
Heir 3.
Hindoo Law (Adoption) 21.
" " (Alienation).
" " (Coparcenary) 19, 24, 53, 55, 90.
" " (Inheritance and Succession) 29.
" " (Migration) 5.
" " (Sale) 3, 10, 11, 12, 15, 16, 17.
" Widow.
Insanity 1.
Limitation 114.
" (Act XIV of 1859) 74, 162.
Loan 2.
Mortgage 34, 209.
Onus Probandi 97, 164, 167, 209, 238, 276.
Partition.
Possession 30.
Receipt 2.
Res Judicata 42, 85.
Reversioner.
Sale 76, 234.
Will 58.

Animal.

A pony is an — within the provision of s. 289 Penal Code.—19 W. R., Cr., 1.

See Feræ Naturæ.

Answer.

See Defence.

Appeal.

1. The High Court will not interfere with a decree proceeding upon a mistake as to the applicability of a law, when the error does not affect the proper decision of the case.—W. R., F. B., 16 (1 Hay 226, Marshall 42).

2. An — from an order dismissing a suit for want of jurisdiction is not an — contemplated by s. 348 Act VIII of 1859.—W. R., F. B., 86.

3. The — from a decision passed under s. 28 Act X of 1859 lies to the Zillah Judge below 5000Rs., and to the High Court above that sum.—(F. B.) W. R., F. B., 90 (2 Hay 441, Marshall 350).

4. An — does not lie under s. 11 Act XXIII of 1861 from an order made under ss. 270 and 271 Act VIII of 1859 with regard to the claims of rival decree-holders in respect of the proceeds of property sold in execution of a decree.—(F. B.) W. R., F. B., 116 (2 Hay 678, Marshall 527); 2 W. R., Mis., 41; 3 W. R., Mis., 1; 6 W. R., Mis., 74; 21 W. R. 194.

5. The — from an order made by the Collector on an application under s. 25 Act X of 1859, lies to the Commissioner and not to the Judge.—(F. B.) W. R., F. B., 118; 14 W. R. 417. *See* 11 W. R. 130, 145.

6. No — lies from an order of a Collector passed after decree and relating to the execution thereof.—W. R., F. B., 147; 2 W. R. (Act X) 10, 74, Mis. 33; 3 W. R. (Act X) 7 (4 R. J. P. J. 389); 3 W. R. (Act X) 145, 6 W. R. (Act X) 8. *See* 93, 115 *post.*

7. Additional grounds of — by reason of non-examination of witnesses and non-production of documents filed in another pending case.—W. R., F. B., 177 (L. R. 70).

8. No — will lie for refund of proceeds of sale in execution of decree paid to a wrong party under s. 270 Act VIII of 1859.—W. R., F. B., 180 (L. R. 99). *See* 9 W. R. 514.

9. An Appellate Court, in the absence of the appellant, should dismiss the —, and not proceed to try it.—1 Hay 27 (Marshall 5).

10. Where a Court of first instance refuses to re-admit a suit, there is an — under s. 119 Act VIII of 1859; but where an Appellate Court has refused to re-admit an — struck off for default, s. 347 does not provide for an —.—1 Hay 104 (Marshall 30).

11. A defendant who does not —, but is satisfied with the judgment of the first Court, cannot be released from liability to the plaintiff's claim by the Lower Appellate Court on his co-defendant's —.—1 Hay 183 (Marshall 106).

12. Under s. 8 Act XXV of 1837, the — from an order passed by a Principal Sudder Ameen lies to the Judge.—1 Hay 251.

13. S. 119 Act VIII of 1859 does not apply to cases in —.—1 Hay 252.

14. Where the grant of a putnee by a Hindoo widow was set aside at the suit of the reversioners, the putneedar was held entitled, under s. 337 Act VIII of 1859, to —.—1 Hay 339 (Marshall 113).

15. Plaintiffs sued their stepbrothers for a fresh partition of their family properties by setting aside arrangements for their distribution entered into by their mother as their guardian during their minority, and for a partition of a putnee talook purchased at a sale held under Reg. VIII of 1819 by the father in the benamee of another. The Lower Court set aside the arrangements concluded by the mother, and ordered a subordinate moonsiff to make a fresh distribution of the properties, and on the moonsiff's report passed a final decree, but dismissed plaintiffs' claim as to the putnee talook upon the objection of the heirs of the benameedar who intervened. *Held* on defendant's appeal that the Lower Court's first order for a fresh partition was an interlocutory order, and that the final decree from which an — lay, was the one passed after the submission of the moonsiff's report. *Held* also that plaintiffs' (respondents') objections under s. 348 Act VIII of 1859 with respect to the putnee talook were inadmissible, inasmuch as the intervenors who had been adjudged the owners were not parties to this appeal, and that their proper course would have been either to prefer a separate appeal, or by petition to have made the intervenors co-respondents.—1 Hay 397.

16. If a plaint discloses a cause of action, a Judge on — ought not to dismiss the suit on the ground merely of defect in the allegations in the plaint. If the subject-matter of the absent allegation has not been tried in the Court below, the proper course is for the Judge to frame an issue, and refer it to the Lower Court for trial under s. 354 Act VIII of 1859.—1 Hay 467 (Marshall 198).

17. Plaintiff sued for damages for indigo plants freshly cut and carried away by defendants; and a decree having been passed, the Sudder Court on appeal remanded the case for further investigation. After remand, defendant brought a counter-action against plaintiff, alleging that the indigo plants were cultivated by him, and the Lower Court, holding that the subject-matter of this latter suit was involved in that of the former, dismissed it, and held defendant liable for damages to a certain extent. Both parties appealed, but the appeal of the defendant was struck off for default. *Held* that the question as to defendant's right to the crop was still open on the — of the plaintiff.—1 Hay 541.

18. In a suit against A and B for the recovery of the possession of property, the Court gave a decree against A and in favor of B. The plaintiff appealed from that part of the decision which was in favor of B. *Held* that the Judge on — had no jurisdiction to reverse the decision of the Court below against A, he being no party to the —.—2 Hay 48 (Marshall 256).

19. Under the former law of procedure, an Appellate Court had not the power to dismiss the whole claim upon

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the — of the plaintiff dissatisfied with a partial decree of the Lower Court.—2 Hay 100.

20. No — lies from an order of a Civil Court refusing to admit a petition against a sale.—2 Hay 111.

21. On — by the defendant, the Court allowed the objection to be raised that the suit was brought for a course of action in respect of which the plaintiff had already obtained a decree in a former suit, notwithstanding this matter had not been pleaded in the Court below.—2 Hay 154 (Marshall 276.)

22. A and B were sued on a joint liability to payment: A did not defend, but B did, and a decree passed against both: B appealed. *Held* that it was competent to the Judge on — to reverse the decree, on the ground that there was no joint liability, but that B occupied a separate estate at a separate rent.—2 Hay 288 (Marshall 281).

23. The award of the Collector, under s. 138 Act X of 1859, in cases of illegal distress for rent, is not final, but open to — to the Judge in cases where the damages exceed 100 rs.—2 Hay 289 (Marshall 282).

24. S. 12 Act XXIII of 1861 applies only to cases in which an — has already been rejected.—2 Hay 302.

25. The mere circumstance of a judgment having been delivered out of Court, instead of in Court, does not constitute error, and is no ground of —.—2 Hay 305 (Marshall 327).

26. The Court of first instance gave a partial decree in favor of plaintiff. On plaintiff's appeal the Judge dismissed the whole case, though there was no objection raised by respondent under s. 348 Act VIII of 1859. *Held* that the Judge could only dismiss plaintiff's appeal.—2 Hay 429 (Marshall 332).

27. The mere fact that a ryot denies execution of a kubooleut, does not give him an appeal to the Judge under s. 153 Act X of 1859, no question to vary the rent having been disposed of by the Deputy Collector.—2 Hay 523.

28. The question tried under s. 77 Act X of 1859 is whether the third party has been in the actual receipt of the rent or not, and not a question relating to title to land or to any interest in land within s. 153; and therefore the — in such cases, when the amount falls below 100Rs., does not lie to the Judge.—2 Hay 532. *See also* 3 W. R. (Act X) 14 (4 R. J. P. J. 399), 7 W. R. 25, 10 W. R. 431, and 94 *post.*

29. A defendant who has been ordered to attend and give evidence under s. 170 Act VIII of 1859 and has failed to do so, is not precluded from appealing against a decree in favor of the plaintiff.—Marshall 568, 4 W. R. (Act X) 17, 5 W. R. 270, 12 W. R. 242. *See* 8 W. R. 453.

30. An — lies from the decision of a Court upon the hearing of a cause that it has no jurisdiction, on the ground that the suit has been instituted in the wrong district.—Marshall 572.

31. Where a suit is dismissed under s. 110 Act VIII of 1859 upon default in appearance by both parties, no — lies from a refusal by the Court to issue a fresh summons upon the plaint already filed.—Marshall 630.

32. An — does not lie under Act VI of 1862 (B. C.) from an order of a Deputy Collector refusing compliance with an application for a new trial in a case in which the suit was originally heard *ex-parte* before that Act was passed.—1 R. J. P. J. 45 (Sev. 16).

33. The decision of a Collector on the claim of a third party intervening under s. 77 Act X of 1859 is not final, but appealable to the Judge, although the rent in dispute be below 100Rs.—1 R. J. P. J. 151 (Sev. 216).

34. Where the interests of all of several defendants are identical, the Judge may decree the whole case (or reverse the decree) on the — of one appellant.—1 R. J. P. J. 160, (Sev. 442, 448*a*). *See also* L. R. 162, 13 W. R. 338, 14 W. R. 121.

35. But not so where their interests are not identical.—Sev. 41.

36. S. 119 Act VIII of 1859 does not bar a regular — from a judgment passed under s. 170 against a party who has been ordered to attend to give evidence, and has without lawful excuse failed to comply with such order; such judgment not being a judgment by default for non-appearance.—Sev. 470.

37. In determining whether an — is presented within time or not under s. 333 Act VIII of 1859, the Court cannot look to the source from which a copy of the judgment appealed against was obtained, but only to the fact that a copy available for the purposes of making an — is in the appellant's hands on a certain date from which the time for filing the — must run.—Sev. 880.

38. There is no — from the order of a Principal Sudder Ameen treating as a nullity the order of a Judge substituting the name of another party for that of a plaintiff (who died *pendente lite*) in a suit transferred from the Judge's to the Principal Sudder Ameen's Court, the order of the Principal Sudder Ameen being in the nature of an interlocutory order under ss. 102 and 103 Act VIII of 1859.—W. R. Sp. 121.

39. The time for rejecting an — is when it is presented, and not after it has once been admitted.—W. R. Sp. 131.

40. Re-admission of —. *See* Dismissal of Suit or Appeal 9; Privy Council 12, 38; Special Appeal 26, 46.

41. S. 58 Act X of 1859 does not extend to take away the right of — in a case where the defendant, having once appeared, is absent on the day of trial.—W. R. Sp. (Act X) 18.

42. *Quære.*—Whether the — from an order of a Collector under s. 26 Act X of 1859 lies to the Judge or the Commissioner.—W. R. Sp. (Act X) 35.

43. Where the Collector referred the purchaser of a house sold under s. 110 Act X of 1859 to a regular suit to obtain possession, and the value of the property exceeded 100Rs., the — was held to lie to the Judge.—W. R. Sp. (Act X) 51 (2 R. J. P. J. 214).

44. In a suit for ejectment, whether under cl. 5 s. 23 or under s. 78 Act X of 1859, an — lies to the Judge under s. 160.—W. R. Sp. (Act X) 83 (2 R. J. P. J. 363). *See also* 12 W. R. 213.

45. In a suit for rent under 100Rs., where the question is simply as to the amount of rent due, the — lies under s. 153 Act X of 1859 to the Collector.—W. R. Sp. (Act X) 104, 130. *See also* 19 W. R. 128.

46. In a suit for rent, where the defendant pleads a mokurruree title, the — lies to the Judge.—W. R. Sp. (Act X) 105.

47. No — lies from an order under s. 105 Act X of 1859, directing the sale of the judgment debtor's tenure in execution of a decree for rent.—W. R. Sp. (Act X) 131.

48. The remedy for a party dissatisfied with an order passed under Act XIX of 1841 making a division of a deceased person's property, is by regular suit, and not by —.—W. R. Sp., Mis., 12.

49. A — will not lie under s. 11 Act XXIII of 1861 from an order in execution in which the representative of a decree-holder was on one side, and a stranger (the auction-purchaser) on the other.—W. R. Sp., Mis., 15.

50. Where a sale in execution was set aside, and the order directing the return of the purchase-money did not also direct the payment of interest thereon, no — was held to lie from the order of the Lower Court refusing to give interest.—W. R. Sp., Mis., 19.

51. The parties contemplated by s. 11 Act XXIII of 1861 are both the opposite parties to the suit or their representatives, but not one of the original parties divided and subsequently represented by two or more other individuals between whom a dispute may arise as to their respective shares or rights in the decree. Any order passed by the Judge in execution as between them cannot be the subject of an —, but their rights must be determined (as in the case of strangers) by separate suit.—W. R. Sp., Mis., 19; 4 W. R., Mis., 14; 5 W. R., Mis., 45; 6 W. R. 21; 7 W. R. 361.

52. No — lies from the order of a Judge rejecting an application for a review of his order dismissing an appeal for default of prosecution.—W. R. Sp., Mis., 20.

53. S. 119 Act VIII of 1859 refers only to original suits, and is not applicable to the re-admission of an — struck off for default of prosecution.—W. R. Sp., Mis., 21.

54. No — lies from an order passed under s. 217 Act VIII of 1859, declining to issue notice as against certain alleged legal representatives of an original party.—W. R. Sp., Mis., 23.

55. No — lies from an order passed under s. 230 rejecting an application by a person not a party to the suit, alleging that he is being dispossessed by the Court Ameen in execution of decree.—W. R. Sp., Mis., 24; 1 W. R. 139; 11 W. R. 186; 21 W. R. 39.

56. An — does not lie from an order passed under

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Act XX of 1863, but the party dissatisfied with the order may seek to set it aside by a regular suit.—W. R. Sp., Mis., 25; 21 W. R. 368.

57. No — lies to set aside a sale of a decree under Act X of 1859, the only remedy being by regular suit as presented by s. 104.—W. R. Sp., Mis., 28.

58. No — lies from an order passed under s. 210 Act VIII of 1859 refusing application of decree-holder to execute decree against the legal representatives of the persons against whom the decree was passed.—W. R. Sp., Mis., 35.

59. No — lies to the High Court from the order of a Small Cause Court in execution.—W. R. Sp., Mis., 38. *See contra* 11 W. R. 203.

60. Under s. 257 Act VIII of 1859, no — lies from the order of a Lower Appellate Court affirming the order of the Lower Court rejecting a petition for the reversal of a sale in execution on the ground of irregularity.—W. R. Sp., Mis., 39.

61. The High Court has no jurisdiction to hear an — from a conviction and sentence by the Superintendent of Cachar in his capacity of Magistrate of the district.—W. R. Sp., Cr., 18.

62. A prosecutor has no right of — from a dismissal of his complaint by a Deputy Magistrate, but may move the Magistrate, under s. 434 Act XXV of 1861, to refer the case to the High Court.—W. R. Sp., Cr., 23.

63. An — does not arise out of a subsequent event or devolution of interest.—(P. C.) 2 W. R, P. C., 19 (P. C. R. 485).

64. The High Court has jurisdiction to hear appeals in testamentary causes.—1 Hyde 70.

64*a*. The refusal of a Judge to restrain the proceedings in a suit on the ground that the costs of a previous suit had not been paid, is not open to — because the order is an interlocutory one, and did not fall within s. 11 Act XXIII of 1861.—2 Hyde 212.

65. S. 77 Act X of 1859 does not bar a right of — to the Judge in a suit for a kubooleut.—1 W. R. 33.

66. Where a winning party (the zemindar) in a suit to contest a notice of enhancement was held entitled to — for a decision as to what was a fair and equitable rent demandable.—1 W. R. 72.

67. An — will lie under s. 231 Act VIII of 1859 if the application is entertained as a suit.—1 W. R. 139, 21 W. R. 39. *See* 13 W. R. 264.

68. An — lies to the Judge from a decision of a Collector in a suit under cl. 1 s. 23 Act X of 1859.—1 W. R. 210.

69. S. 153 Act X of 1859 has no application to a suit under cl. 5 s. 23.—1 W. R. 243.

70. Under s. 378 Act VIII of 1859, an order rejecting an application for a review of judgment is final.—1 W. R., Mis., 7; 3 W. R., Mis., 3; 5 W. R., Mis., 58; 9 W. R. 489. *See* 52 *ante*.

71. There is no — against the order of a manager appointed under s. 243 Act VIII.—1 W. R., Mis., 11. (*Over-ruled by F. B.*) *See* 158 *post*.

72. Plea of sickness inadmissible for not filing — in time.—1 W. R., Mis., 23.

73. An — is not admissible when the dispute is not between the parties to the suit.—1 W. R., Mis., 31.

74. Appeal from order of Magistrate ordering maintenance of chowkeedar in possession of chakeran land.—1 W. R., Cr., 12.

75. The petition of — in a trial by jury should state distinctly in what respect the law has been contravened.—1 W. R., Cr., 21.

76. Where a suit is thrown out by first Court on the ground of limitation, and the decree is reversed in — and the suit decreed by the Appellate Court, no — lies on the merits from the Appellate Court's decision.—2 W. R. 167.

77. Under s. 19 Act VI of 1862 (B. C.) the Deputy Collector may hear an —, if referred to him by the Collector from the order of another Deputy Collector.—2 W. R. (Act X) 10 (4 R. J. P. J. 25). (*Over-ruled by F. B.*) *See* 6 W. R. (Act X) 65.

78. Under s. 10 Act VI of 1862 (B. C.) an — lies to the High Court in cases (above 5000Rs. in value) relating to measurement of land.—2 W. R. (Act X) 86.

79. Objectors (whose claim to a moiety of the property sought to be taken in execution has been admitted by an order of Court) are in a like position to decree-holders, and may, therefore — from an order passed in execution of the decree.—2 W. R., Mis., 6.

80. No — lies from an order refusing to grant possession under ss. 259 and 263 Act VIII.—2 W. R., Mis., 9.

81. No — lies to the High Court from an order distributing sums realized in execution among various decree-holders.—2 W. R., Mis., 21. *See* 9 W. R. 514.

82. No — lies from the order of a Lower Court suspending the execution of one decree pending the result of an enquiry in a cross-decree held by the judgment-debtor.—2 W. R, Mis., 24.

83. No — lies from the order of a Judge refusing to recognize the position of a purchaser of a decree.—2 W. R., Mis., 33.

84. Until a person is found a *bonâ fide* purchaser of a decree for valuable consideration, he cannot be treated as one of the parties of the suit or the real representative to whom s. 11 Act XXIII of 1861 allows a right of — as a party to the suit.—2 W. R., Mis., 38.

85. No — lies to an intervenor whose objection has been disallowed by the Lower Court.—2 W. R., Mis., 48.

86. An — lies from an order refusing to appoint a manager under s. 213 Act VIII.—2 W. R., Mis., 49. (*Affirmed by F. B.*) *See* 158 *post*.

87. No — lies from an interlocutory order obtained by a purchaser at a sale in execution of a decree, who was not a party to the original suit.—2 W. R., Mis., 50.

88. Nor at the instance of an objector not a party to the suit.—2 W. R., Mis., 56.

89. Objections to the sufficiency of evidence are not a ground of — .—2 W. R., Cr., 3.

90. An — was held to lie under s. 408 Act XXV of 1861 from a judgment of a Sessions Judge passed under s. 422, confirming an illegal sentence of an Assistant Magistrate.—2 W. R., Cr., 13. *But see* 8 W. R., Cr., 59. *Held* otherwise under s. 422 Act VIII of 1869.—15 W. R., Cr., 33.

91. A suit for contribution below 500Rs. and also to set aside an alleged collusive sale by defendant, was held to be one coming under s. 3 Act XLII of 1860, and not appealable, the latter part of the plaint regarding concealment of sale being mere surplusage only intended to evade the jurisdiction of the Small Cause Court.—3 W. R. 46.

92. An — lies under s. 155 Act X of 1859 to the Collector from the decision of a Deputy Collector under cl. 4 s. 23.—3 W. R. (Act X) 4, 5 W. R. (Act X) 67.

93. S. 103 Act X and s. 209 Act VIII give no authority for an — from an order passed by a Collector in execution of a decree.—3 W. R. (Act X) 10.

94. No — lies to the Judge under ss. 153 and 160 Act X from a decision passed under s. 77 in a suit for rent less than 100Rs. where the determination was between plaintiff and intervenor as to who was in the actual receipt of rent. —(F. B.) 3 W. R. (Act X) 21 (4 R. J. P. J. 405); 5 W. R. (Act X) 18, 94; 10 W. R. 38, 390; 12 W. R. 81.

95. The — in a suit for enhancement above 5000Rs. in Chota Nagpore, commenced in June 1861, lies to the High Court.—3 W. R. (Act X) 22.

96. Ss. 153 and 160 Act X do not bar an — to the Judge in a suit for a kubooleut under cl. 1 s. 23.—3 W. R. (Act X) 138; 4 W. R. (Act X) 32.

97. No — lies from a Collector's order dismissing a suit for default under s. 64 Act X.—3 W. R. (Act X) 162.

98. A Collector acts without jurisdiction in treating an order of a Deputy Collector dismissing for default a suit for more than 100Rs., as a miscellaneous order appealable to him under s. 103 Act X, and restoring the case. The — from the Deputy Collector lies not to the Collector but to the Judge.—3 W. R. (Act X) 165.

99. No — lies to an objector; only the actual parties to the suit can be heard in —.—3 W. R., Mis., 9.

100. An — does not lie to the High Court from the order of a Collector refusing to distribute amongst the shareholders the amount of their shares of the surplus proceeds of a joint undivided estate attached and administered under Reg. V of 1812.—3 W. R., Mis., 17 (4 R. J. P. J. 442).

101. According to s. 283 Act VIII, orders passed in execution of decree were not open to — ; and by s. 11 Act XXIII of 1861 the right of — is restricted to cases in which the appellant was one of the parties to the original suit.—3 W. R., Mis., 22.

102. Under what circumstances the sickness of a mookhtar

APPEAL (*continued*).

in Chota Nagpore may be regarded as a sufficient reason for default in an —.—4 W. R. 11.

103. An order passed by a Deputy Collector under s. 58 Act X, either admitting an application for review of judgment or an application to revive a suit, is final under s. 13 Act VI of 1862 (B. C.)—4 W. R. (Act X) 3. *See* 11 W. R. 129.

104. The failure of a Deputy Collector to try the proper issue, or his misapprehension of the evidence in a suit for rent below 100Rs., gives no right of — to the Judge.—4 W. R. (Act X) 29, 40.

105. Where a se-putneedar sues for rent and a dur-putneedar intervenes as alone entitled to collect, an — will lie to the Judge under s. 153 Act X —4 W. R. (Act X) 30.

106. Under the same section, an — lies to the Judge in a suit below 100Rs., where the first Court has determined a question as to the right to receive the rent.—4 W. R. (Act X) 34.

107. The stamp required for a petition of — from an order rejecting an application to set aside an *ex-parte* decision under s. 119 Act VIII, is the stamp required for a miscellaneous petition. Such an — should be treated as a summary — and not a regular —.—4 W. R., Mis., 15.

108. A Lower Appellate Court may entertain an — as to matter respecting which the first Court rejected a review of its own order.—4 W. R., Mis., 17.

109. Purchasers of the property of a judgment debtor at a sale in execution, do not become parties to the suit and acquire a right of — regarding the sale.—4 W. R., Mis., 17.

110. Under s. 257 Act VIII, a Judge on appeal has no jurisdiction to interfere with the order of the first Court setting aside a sale; the order of the first Court being final. —4 W. R., Mis., 22; 8 W. R. 109.

111. An — by the alleged representative of a deceased plaintiff ought not to be admitted without an order of Court allowing the representative's name to be entered in the register of suits.—5 W. R. 133.

112. The decision of a Collector in matters of survey and measurement falling within ss. 9 and 10 Act VI of 1862 (B. C.) is appealable to the Judge.—5 W. R. (Act X) 17; 9 W. R. 520. *See* 200 *post.*

113. The decision of a Collector under s. 11 of the same Act is not appealable; the Collector being the depositary of the standard pole of each pergunnanah, and it being exclusively within his province to declare what the standard of such pole is.—*Ib.* (*Over-ruled by F. B.*) 14 W. R., F. B., 4. *See* 200 *post.* *See also* 7 W. R. 239, 11 W. R. 510.

114. Under s. 159 Act X, a Collector's judgment in — is final, whether it is passed on the merits or disposes of the — on a preliminary objection.—5 W. R. (Act X) 25.

115. Under s. 151 Act X and Act VIII of 1865 (B. C.), an appeal does not lie to the High Court from an order in execution.—5 W. R. (Act X) 35, 89. *See also* 9 W. R. 326, 440; 16 W. R. 55.

116. The prohibition under s. 64 Act X against an — from an order of dismissal for default applies only to cases of dismissal before the settlement of issues.—5 W. R. (Act X) 65.

117. The — lies to the Judge in a suit for rent under 100Rs., in which a third party intervened under s. 77 Act X, and a question of title was determined by the Deputy Collector.—5 W. R. (Act X) 78. *E.g.*, right of landlord to distrain for rent.—6 W. R. (Act X) 12. *See also* Intervenor 31.

118. An appeal lies, under s. 13 Act VI. of 1862 B. C., from an order rejecting an application to set aside a judgment passed *ex-parte* against the defendant.—5 W. R. (Act X) 95.

119. No — lies from an order of a Civil Court directing a criminal prosecution for forgery committed before it.—5 W. R., Mis., 18.

120. S. 12 Act XXIII of 1861 does not apply to an order made after the passing of that Act.—(F. B.) 5 W. R., Mis., 25.

121. No — lies from an order passed at the instance of a third party for excluding a particular property from sale in execution of decree.—5 W. R., Mis., 28; 11 W. R. 264.

122. Where a dur-putneedar intervened under s. 269 Act VIII and his claim was admitted, no — was held to lie from such order.—5 W. R., Mis., 51.

123. Convictions under Act V of 1861 are appealable like other convictions.—5 W. R., Cr., 22.

124. Where a Sessions Judge and assessors find a person guilty on his own plea, there is no ground of —.—5 W. R., Cr., 52.

125. With reference to s. 364 Act VIII, no — lies from an order after decree affecting third parties. They must resort to a regular suit; and s. 11 Act XXIII of 1861 refers only to questions between parties to the suit.—6 W. R. 21. *See also* 16 W. R. 307.

126. A defendant who did not appear cannot — against a judgment passed in favor of his co-defendants, although his interests are identical with those of the plaintiffs who have not appealed.—6 W. R. 36.

127. An — will lie from an order setting aside an *ex-parte* decree under s. 119 Act VIII, if the order has been made without jurisdiction, or where the application has been made after the prescribed time.—6 W. R. 300; 15 W. R. 175. Only a regular — but not a summary or miscellaneous — will lie in such a case.—23 W. R. 147.

128. The decision of a Collector under s. 9 Act VI of 1862 (B. C.) is final only as to possession, and not as to title; the unsuccessful party having a right to sue in the Civil Court for a declaration of his right.—6 W. R. (Act X) 10.

129. The order of a Collector, under s. 58 Act X, complying with an application (made more than 15 days after any process for enforcing the judgment has been executed) for the revival of an *ex-parte* decree, is not final under s. 13 Act VI of 1862 (B. C), because it is null and void for want of jurisdiction.—6 W. R. (Act X) 54.

130. An — may lie from a favorable decision.—6 W. R., Mis., 18. *See* 170 *post.*

131. An — lies to the Judge from an order of a Lower Court deciding that execution of a decree was barred by limitation.—6 W. R., Mis., 36.

132. Where a claim under s. 246 Act VIII is dismissed, no — lies, under s. 11 Act XXIII of 1861, from the order of dismissal, even though the claimant is a mortgagee who has foreclosed.—6 W. R., Mis., 46. *See also* 19 W. R. 97.

133. S. 11 Act XXIII of 1861 does not alter or modify the effect of s. 246 Act VIII so as to give an — from orders passed under the latter section.—6 W. R., Mis., 61. *See also* 11 W. R. 201; 12 W. R. 333, 354; 13 W. R. 121; 15 W. R. 164, 339; 21 W. R. 365.

134. The order of a subordinate Court passed under s. 254 Act VIII, directing that purchase-money should be accepted after the fifteenth day from the date of sale, is not an irregularity contemplated by s. 256, and of itself can form no ground of — to the Judge.—6 W. R., Mis., 82.

135. A defaulting purchaser under s. 251 and the decree-holder were held to be parties to the suit within the meaning of s. 11 Act XXIII of 1861 so as to give an —.—6 W. R., Mis., 126. *See also* 7 W. R. 110. *But see* 9 W. R. 500.

136. No — lies to the Judge from the decision of a Deputy Collector in a suit to contest the right to distrain for arrears of rent property below the value of 100Rs. where an intervenor under s. 140 Act X claims the right to distrain and the Deputy Collector determines no question of title.—7 W. R. 108.

137. Where a second decree-holder himself purchases the property sold in execution of his own decree, and, instead of the money being deposited in Court, an order is obtained allowing him to set-off his decree as purchase-money, such order is not open to — under s. 270 Act VIII.—7 W. R. 118.

138. An — will lie from the order of a Moonsiff dismissing a suit as beyond his jurisdiction because it was undervalued.—7 W. R. 183.

139. An — will not lie from the separate determination of an isolated issue in a suit, which does not determine the suit but leaves other issues to be gone into.—7 W. R. 222.

140. An — lies from the order of a Lower Appellate Court remanding for trial on its merits a suit held by the first Court to have been barred by limitation, and on the ground of *res judicata*.—7 W. R. 331. *See also* Limitation 122.

141. No — lies to the High Court, under s. 27 Act XXI of 1863, from an interlocutory order of the Recorder of Rangoon passed before judgment in the suit (*i.e.* one under s. 83 Act VIII) directing a defendant to furnish security.—7 W. R. 508.

142. *Quære.*—Whether there is any — under Act VIII from an order to furnish security under s. 83.—*Ib.*

143. A surety against whom the judgment-creditor is proceeding under s. 204 Act VIII is not debarred, by s. 11

APPEAL (*continued*).

Act XXIII of 1861, from an —.—8 W. R. 24, 15 W. R. 538. *See* 13 W. R. 403.

144. A guardian cannot — for the purpose of protecting himself against a decree by making the property of his minor liable under the decree in ease of himself.—8 W. R. 29. (*Affirmed by P. C.*) 22 W. R. 290.

145. S. 102 Act VIII does not bar the right of heirs to proceed with an — as against joint heirs.—8 W. R. 84.

146. S. 11 Act XXIII of 1861 does not touch cases already provided for by Act VIII, and does not allow an — in matters provided for by ss. 243 and 364.—8 W. R. 136. (*Over-ruled by F. B.*) *See* 158 *post*.

147. What is meant by "otherwise may" in s. 153 Act X, so as to determine whether the — lies to the Collector or to the Judge.—8 W. R. 192.

148. The words "party to a suit" in s. 11 Act XXIII of 1861 include the heirs, assignees, and representatives of such party, and consequently give the purchaser of a decree all the rights of — etc., which his vendor had.—8 W. R. 197, 10 W. R. 205. *But see* 13 W. R. 224, 15 W. R. 283.

149. An — under s. 84 Act XX of 1866 from the Deputy Commissioner of Chota Nagpore should be made to the Judicial Commissioner who exercises the powers of a Zillah Judge.—8 W. R. 266.

150. Even though a Judge wrongly holds that a claimant is in possession in trust for the debtor, there is no —; neither under s. 246 Act VIII because it is specially barred, nor under s. 11 Act XXIII of 1861 because the claimant is no party to the suit.—8 W. R. 304.

151. The — from a Deputy Collector's decision under s. 77 lies to the Collector or to the Judge according as the question is one of law or fact; but if of law, it must be properly incidental to the suit.—8 W. R. 493.

152. An order of a District Court under s. 81 Act XX of 1866 is not appealable to the High Court.—9 W. R. 122. *See also* 9 W. R. 283.

153. S. 378 Act VIII bars an — from the decision of a Principal Sudder Ameen granting a review of his predecessor's judgment.—9 W. R. 125.

154. Where a Judge, executing several decrees against one defendant, divided the property amongst the judgment-creditors rateably, instead of satisfying the first attaching creditor as directed by s. 270 Act VIII, it was held that there was no — for the creditors *inter se*, nor as against the common debtor.—(F. B.) 9 W. R. 223.

155. An — under s. 11 Act XXIII of 1861 against an order for execution will not affect a purchaser at a sale under the execution.—(F. B.) 9 W. R. 230.

156. Where the finding by a Court in execution is in strict accordance with the original decree, and is not contested in due time under s. 11 Act XXIII of 1861, it becomes final.—9 W. R. 241.

157. A Collector's decision is not final by s. 153 Act X in suits under cls. 2, 4, and 7 s. 23, and under s. 24, if, to the cause of action under one of those clauses or sections, there be joined a separate cause of action under cl. 5 or under any other section of the Act.—9 W. R. 534. *See also* 10 W. R. 38 (*explained in* 14 W. R. 8). 15 W. R. 165.

158. Under s. 11 Act XXIII of 1861 an — lies from an order made (on a question arising between the parties to the suit) under s. 243 Act VIII.—(F. B.) 10 W. R., F. B.. 5. *See* 12 W. R. 66, 13 W. R. 242.

159. Where a case is remanded to the Lower Court for trial of a particular issue (*e.g.* limitation), the parties can — from the decision on remand, not only on that particular point, but on the whole case.—10 W. R. 335.

160. No — lies from the order of a Judge making over to the Official Assignee the proceeds of property sold in execution.—11 W. R. 100, 420.

161. No — lies from the order of a Judge refusing to correct a decree of his court.—11 W. R. 264.

162. No — lies under s. 363 Act VIII from an interlocutory order of a Judge considering himself bound to proceed with a case remanded to him, notwithstanding the fact of a compromise having been entered into.—11 W. R. 505.

163. No — lies from an order passed under s. 336 Act VIII, rejecting a memorandum of — because not presented within the prescribed time.—11 W. R. 556.

164. No — lies from a decision disposing of a case in the absence of defendants who, being summoned under s. 41 Act VIII, did not appear and give sufficient reasons for non-attendance.—12 W. R. 207.

165. A sale under Act VIII of 1865 (B. C.) is a proceeding from which, if held by the Deputy Collector, an — lies to the Collector.—12 W. R. 326.

166. No — lies from an order refusing to make an — under s. 77 Act X a defendant in a suit for rent.—12 W. R. 355.

167. The decision of a Revenue officer acting under s. 10 Act VI of 1862 (B. C.) is final if not reversed on appeal, if the decision be on a matter with which that section authorises him to deal, but not where he assesses upon the land such rent as he thinks proper.—12 W. R. 371. *See* 25 W. R. 346.

168. Where a suit for enhancement is decided by a Deputy Collector upon the issue whether a notice has been served or not, without any question of the right to enhancement arising, the appeal lies to the Collector, and not to the Judge, whether under s. 153 Act X or s. 102 Act VIII of 1869 (B. C.).—12 W. R. 446.

169. An — lies from the *decree*, and not the *decision*, of the Court of original jurisdiction.—13 W. R. 1.

170. Thus where a decree was in defendant's favor, but some of the issues were against him, he was held to have no right of — against the Court's decision.—*Ib. See also* 13 W. R. 239. *See* 130 *ante*.

171. Where an application was made to correct an error in a proceeding in which interest was calculated, the order passed on the application was held open to — under s. 11 Act XXIII of 1861.—13 W. R. 138.

172. On — to the High Court under s. 257 Act VIII, that which is the final judgment of the High Court will be final—*e.g.*, not the judgment of the Senior Judge of a Division Bench if appealed from under s. 15 of the charter, but the judgment of the Appellate Court under the same section.—13 W. R. 209.

173. In a suit brought in the Recorder's Court at Moulmein for administration and division of an estate (the property exceeding 10,000Rs. in value) a portion of the suit was dismissed as false, and the remaining portion of the suit, for which judgment was given for plaintiff, being less than 10,000Rs.,—*Held*, on a fair construction of ss. 27 and 39 Act XXI of 1863, that an — from this decision was cognizable by the High Court.—13 W. R. 393.

174. If a Collector finds an agent unable to answer questions which he thinks necessary, and determines under s. 64 Act X that the appearance ought to be by the party himself, and if the party fails to appear, the case comes under s. 58, and no — lies from the Collector's judgment in such a case.—13 W. R. 411.

175. The remedy is an — to the Civil Court if the Ameen deputed to make a measurement under s. 10 Act VI of 1862 (B. C.), or the Collector superintending his proceedings, does any Act not in conformity with that section.—14 W. R. 269.

176. An — from a sentence passed by an officer in a non-regulation district invested with the powers mentioned in s. 445*a* Act VIII of 1869 lies under s. 445*c* to the High Court only.—14 W. R., Cr., 18. But only when the conviction has been come to under the powers specified in s. 445*a*.—(F. B.) 14 W. R., Cr., 33.

177. Where a suit originally valued at 13,777Rs. was found composed of several causes of action, in respect of which separate trials were ordered under s. 9 Act VIII, the — from the decision in one of these separate suits valued at 149Rs. was held not to lie to the High Court.—15 W. R. 31.

178. A complaint or proceeding under s. 145 Act X against a person who has wrongfully carried off crops which were under distraint, is not a suit (certainly not a suit within the meaning of cl. 7 s. 23), and therefore does not fall within the description of suits in which, under s. 160, the — lies to the Zillah Judge.—15 W. R. 136.

179. An order admitting a case tried *ex-parte* to a re-hearing under s. 119 Act VIII is not open to —.—15 W. R. 315.

180. Where the Lower Court treats two cases as consolidated and passes one decree in both suits, one — will lie.—15 W. R. 395.

181. When a Moonsiff acts without jurisdiction, the question may be the subject of an — to the Appellate Court of the district, for every Superior Court is bound to take

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cognizance of all acts done without jurisdiction by the Courts subordinate to it.—15 W. R. 556.

182. The words "District Judge" in s. 102 Act VIII of 1859 (B. C.), does not mean a Subordinate Judge, so as to bar an — from a decision of the latter.—16 W. R. 132. Nor the Additional Judge.—19 W. R. 201 (*over-ruled by F. B.*) 21 W. R. 320, 19 W. R. 200. Not even in respect of appeals referred to the Subordinate Judge under s. 26 Act VI of 1871.—16 W. R. 235.

183. No — is given by s. 153 Act X in a case in which a landlord sues a person as tenant who repudiates the tenancy without denying the landlord's title.—16 W. R. 233.

184. No — lies from an order of a Lower Court refusing an application by one decree-holder, under s. 207 Act VIII, to execute the whole of a joint decree to the exclusion of his co-decree-holders.—17 W. R. 136, 415; 24 W. R. 286.

185. No — lies under s. 102 Act VIII of 1869 (B. C.) from the order of a District Judge on an application connected with the sale of a tenure in execution of a decree for arrears of rent below 100Rs.—17 W. R. 189. The word "suit" in s. 102 being intended to cover all proceedings prior to decree and subsequently in execution.—19 W. R. 307, 23 W. R. 207.

186. Where a suit for rent was decreed as against the tenant but dismissed as against his vendee who had been wrongly added as a defendant, no — was, held to lie from the vendee for a declaration of her liability as purchaser.—17 W. R. 219.

187. No — lies from an order of a Court giving possession (under s. 263 or s. 264 Act VIII) to a purchaser at a sale in execution of a decree.—17 W. R. 395.

188. An — lies under Act VI of 1871 to the Judge from an order of a Subordinate Judge passed under Act IX of 1861.—17 W. R. 551.

190. No — lies to the High Court, under Act XXXVII of 1855, from a conviction by the Deputy Commissioner of the Sonthal Pergunnahs.—17 W. R., Cr., 11.

191. Where an original suit is brought for a sum exceeding 5000Rs. or for property exceeding that value, and the decree is for a less sum or for property of less than that value, the —, according to s. 22 Act VI of 1871, will lie to the High Court, the words "subject-matter in dispute" meaning not the subject-matter in dispute in the appeal but in the original suit.—(F. B.) 18 W. R. 261. The principle of the above ruling applies as well to an — from an order passed in execution.—18 W. R. 316. *See* converse case where, the original subject-matter of dispute being less than 5000Rs., the — was held to lie to the District Court and not the High Court.—19 W. R. 131.

192. Where a plaintiff died on the day on which the time for filing an — expired, and his son applied two days after for leave to file an —,—*Held* that the point for consideration would be whether the application was made within a reasonable time after the death, and that the application would be dealt with on the principle laid down in s. 102 Act VIII; the matter being one in the District Judge's discretion and not appealable.—18 W. R. 293.

193. In determining the venue of — against an order passed in execution, the "subject-matter in dispute" used in s. 22 Act VI of 1871 must be taken to exclude the interest which accrued subsequently to the date of the decree.—18 W. R. 316.

194. No — is provided from a summary order under Reg. I of 1798; but such order is open to question in a regular suit. S. 38 Act XXIII of 1861 gives no right of — in such cases.—19 W. R. 122.

195. Where a precept was issued by the Judge to the Collector, directing him to hold certain land in attachment and to appoint a manager under s. 26 Reg. V of 1812 and s. 3 Reg. V of 1827, the High Court allowed an — to be filed with liberty to the respondent to contend that no — lies.—19 W. R. 170. Ruled by a Full Bench that the — does not lie.—20 W. R. 262.

196. Where the High Court refused to interfere with the decision of the Lower Appellate Court in a suit instituted under s. 15 Act XIV of 1859, although, according to s. 26 Act XXIII of 1861, no — lay in such a case.—19 W. R. 247.

197. Where land is attached in execution of a decree for rent, and on an application either under s. 246 Act VIII or s. 106 Act X, it is released from attachment by order of a Court of competent jurisdiction, such order is not subject to —, and can only be impugned by a regular suit.—20 W. R. 90.

198. Where a decree by a Deputy Collector had been transferred to the Civil Court, and application for execution was made while Act III of 1870 (B. C.) was in force,—*Held* that the execution proceedings were subject to the provisions of the Civil Procedure Code, and that an order passed therein was appealable under s. 11 Act XXIII of 1861.—20 W. R. 91.

199. A Moonsiff's order deciding that an application to set aside an *ex-parte* decree is in time, does not come under s. 119 Act VIII, and such order is not final.—22 W. R. 5. *See also* 25 W. R. 304.

200. A Collector's finding under s. 10 Act VI of 1862 (B. C.) as to existing rates, is final.—22 W. R. 476. So also his finding under s. 9 as to the standard pole of measurement in use in a pergunnah.—24 W. R. 424. *See* 112 *ante*.

201. An — lies to the High Court from proceedings taken under s. 38 Act VIII of 1869 (B. C.)—24 W. R. 171.

202. Where a respondent, by reviving an —, substitutes himself for his father as a defendant in the suit, he assumes not merely liability as heir in the ordinary way, but the position of defendant with all the rights and liabilities which had previously attached to it.—(P. C.) 24 W. R. 193.

203. No — lies from a summary order passed under s. 6 Reg. VIII of 1819 directing a zemindar to accept the security tendered and to give effect to a transfer without delay.—25 W. R. 222.

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Appearance.

In a case under Act X of 1859, where the plaintiff appeared at the preliminary hearing when the issues were framed, and was not required to appear in person on the day of trial, the presence of the plaintiff's pleader and mookhtar was an — within the meaning of the law, having reference to s. 20 Act XX of 1865.—13 W. R. 146.

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Appellate Court.

1. An — ought not to determine an appeal on issues or grounds not considered or taken or tried in the Courts below.—2 Hay 82; 3 R. J. P. J. 152; 7 W. R. 61, 478; (P. C.) 11 W. R., P. C., 27; 17 W. R. 407; 19 W. R. 267; 21 W. R. 54, 59, 132, 333; 22 W. R. 299; 23 W. R. 169, 404; 25 W. R. 315.

2. S. 359 Act VIII requires the points in appeal, as well as those in the original proceedings, to be stated, and the reasons upon which the decision is arrived at thereon.—W. R. Sp. 98, 11 W. R. 312, 15 W. R. 130, 131. *See* 12 W. R. 272.

3. An — is bound to give the reasons for its judgment when it differs from the judgment of the Lower Court.—W. R. Sp. 347 (L. R. 123), 2 W. R. 77, 11 W. R. 559, 15 W. R. 162, 16 W. R. 280, 19 W. R. 299, 20 W. R. 403, 21 W. R. 135, 284, 24 W. R. 342. *See* 12 W. R. 272.

4. What the judgment of an — should contain.—1 W. R. 214; 3 W. R. 4, 176, 192; 4 W. R. 4, 100; 11 W. R. 34, 312; 16 W. R. 15.

5. The judgment of an —, reversing the judgment of the Lower Court without giving reasons for differing as to facts, is no legal judgment, and may be interfered with in special appeal.—1 W. R. 244, 14 W. R. 58, 17 W. R. 357, 20 W. R. 286, 403; 21 W. R. 135, 24 W. R. 342. *But see* 7 W. R. 2, 12 W. R. 152, 377. An — is not at liberty, unless there are good reasons for so doing, to reverse the decision of the Lower Court upon a question of fact.—25 W. R. 363.

6. The judgment of an — is defective if it states the opinion of the Lower Court but not its own.—1 W. R. 295.

7. Where an — was held bound to give reasons for its judgment even when it concurred with the Lower Court.—4 R. J. P. J. 158, 2 W. R. 7, 3 W. R. 126, 4 W. R. 4, 7 W. R. 137, 8 W. R. 272, 340; 11 W. R. 812, 23 W. R. 266. *But see* 5 W. R. 178, 10 W. R. 100, 11 W. R. 319, 15 W. R. 54, 25 W. R. 12.

8. The — should not ignore a question treated as most important by both parties to the suit and by the first Court.—2 W. R. 2.

9. An —, instead of remanding the suit, may itself try an issue in bar overlooked by the Lower Court, if there is sufficient evidence to enable it to do so.—2 W. R. 161, 14 W. R. 69.

10. Where an appeal is barred by law and precedent, an — cannot interfere in any matter legitimately arising out of the case, unless there is want of jurisdiction.—2 W. R., Mis., 45.

11. Duty of — to rectify errors in procedure of Lower Court.—4 W. R. (Act X) 37.

12. It is the duty of an — to allow the parties or their pleaders to submit the evidence to it at the hearing in open Court, and to take upon the evidence so submitted every comment and found upon it every argument they might think necessary.—15 W. R. 54.

13. Where a new and different issue is raised in the —, the parties ought to have the fullest opportunity of producing evidence upon it.—17 W. R. 361. *See also* 18 W. R. 297, 21 W. R. 407.

14. An — is bound precisely in the same way as a Court of first instance to test evidence extrinsically as well as intrinsically.—17 W. R., Cr., 59. *But see* (as to Civil cases) 25 W. R. 30.

15. The words "appellate judgment of acquittal" in s. 272 Act X of 1872 include all judgments of an — by which a conviction is set aside.—24 W. R., Cr., 41.

16. Where an — made an order under s. 280 Act X of 1872, enhancing the sentence appealed from, without having served notice on the appellant, the order of enhancement was quashed as illegal.—24 W. R., Cr., 72.

17. If a Lower — thinks that the defendants were taken unawares as to an issue involving plaintiff's claim to land, which was framed and tried by the first Court, it ought to call for fresh evidence on that issue and not dismiss plaintiff's case summarily, for such a course would debar plaintiff in future from raising the claim.—25 W. R. 99.

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Arbitration.

1. Where a suit has been referred to — by an order of Court, and the Court afterwards gives judgment according to the award made upon such reference, such judgment is final by virtue of s. 325 Act VIII, and no appeal lies therefrom.—1 Hay 306 (Marshall 163), 14 W. R. 33, 17 W. R. 30, (P.C.) 23 W. R. 429. *See* 15 W. R., F. B., 9.

2. Reference to — cannot be made except on the recorded and expressed consent of both parties.—2 Hay 583 (Marshall 517). The consent of the pleaders is not sufficient.—16 W. R. 160.

3. When a case is referred to the award of three arbitrators, an award signed by two is null and void, and ought not to be read as evidence in the case.—Sev. 479. *See also* 14 W. R. 211, 22 W. R. 129.

4. A submission to private — need not be put in writing to be valid, and a private award made in pursuance thereof will be respected by the Courts if duly performed. Both submission and award may be proved without *ikrarnamah.* —W. R. Sp. 76. *See also* 18 W. R. 533.

5. An award of — can only be set aside for corruption or partiality, but not on the ground of inconsistency.—W. R. Sp. 153.

6. Under the law previous to Act VIII, the summary refusal to enforce an — award did not bar the use of the award as the basis of a regular suit.—W. R. Sp. 283 (L. R. 65).

7. A mere agreement to refer to —, if it contain no acknowledgment of the plaintiff's right or possession, does not save limitation; but the time during which the case was before the arbitrators and the plaintiff was trying in another form to enforce the award, may be deducted from the period of limitation.—*Ib.*

8. Before a judge refers a case to —, he should ascertain whether the parties nominated are willing to act; and till he has done so, any nomination of an arbitrator by him, without the approbation or consent of the parties, is illegal. But when a case has been referred to —, after the preliminary steps have been properly taken, the Judge has the sole power of appointing fresh arbitrators in the room of such as refuse to act.—W. R. Sp. 338 (L. R. 113).

9. *Quære.*—Whether a Judge proceeding under s. 319 Act VIII to appoint arbitrators, is not bound to appoint, in the room of the arbitrators who resign, an equal number of new arbitrators, unless the parties consent to a smaller number.—*Ib.*

10. Application for reference to — must be made to the Court in writing by parties in person or by pleaders specially authorised.—W. R. Sp. (Act X) 41.

11. There is nothing in Act VIII to prevent parties, who have a suit pending in Court, to submit the subject-matter of that suit and other matters in dispute to — under s. 327. —W. R. Sp., Mis., 21.

12. A regular (and not a summary) appeal lies to set aside an award of — passed under s. 313 Act VIII.—W. R. Sp., Mis., 33. And should be on the full stamp.—12 W. R. 50. *See* 15 W. R., F. B., 9.

13. In appealing to set aside an award as not binding upon the appellant, he is not bound to appeal against every interlocutory order.—(P.C.) 5 W. R., P. C. 21 (P. C. R. 616).

14. Both the Code of Procedure and the Punjab Code require the consent of the parties to a reference to, and the appointment of, arbitrators.—*Ib. See also* 14 W. R. 211.

15. A party, by appearing before arbitrators appointed without his consent, and in spite of his repeated remonstrances, does not forfeit his right to question the validity of the award.—*Ib.*

16. An award is not reversible except under s. 324 Act VIII. An arbitrator is not bound by technical rules of Court. He is appointed to give an equitable award, and can decide a case upon a document whether stamped or unstamped. —1 W. R. 12.

17. A plaintiff must show special authority to assent to an — on behalf of another plaintiff.—1 W. R. 80.

18. The Court cannot legally allow a case, as regards an absent plaintiff, to be decided by reference to —.—*Ib.*

19. Award should be filed in Court. Effect of not filing as laid down in s. 327 Act VIII.—1 W. R. 163. *See also* 25 W. R. 152.

20. An — award as to division of property left to minor sons, though assented to by their guardian, was set aside so far as regarded those sons on proof that the partition was injurious to them.—1 W. R. 280.

21. Partial disagreement of two arbitrators does not nullify their award as a whole.—2 W. R. 32.

22. Under s. 318 Act VIII the time for delivery of an award may be extended at the discretion of the Court without the consent of the parties.—2 W. R. 297.

23. Civil Court's judgment cannot affect the rights of parties as declared in an award.—*Ib.*

24. Court cannot reserve permission to a plaintiff to bring a fresh suit for the matter of an — award, except under s. 97 Act VIII.—*Ib.*

25. S. 325 Act VIII is not applicable to private awards and ought to be enforced under s. 327, and an appeal will lie from the order of a Court directing its enforcement.—3 W. R. 154. *See* 14 W. R. 255; 15 W. R., F. B., 9; 21 W. R. 182.

26. A judgment given on an — is final under s. 325 when it is according to the award, but not otherwise; an appeal will lie on the ground that it is contrary to the award.—3 W. R. 168. *See also* 11 W. R. 140; 15 W. R., F. B., 9; (P. C.) 23 W. R. 429, 24 W. R. 188.

27. The refusal of arbitrators to amend a clearly bad award is misconduct on their part, within the meaning of s. 324, justifying its being set aside.—*Ib.*

28. Arbitrators should give separate awards in a case referred to them by the Judge, and on other matters referred to them by the parties, instead of bringing them all up and giving a general award.—3 W. R., Mis., 27.

29. An order of reference to — should, as required by s. 316, provide for difference of opinion among the arbitrators and for a decision by a majority.—4 W. R. 4. *See also* 10 W. R. 398, 22 W. R. 129.

30. The benefit of s. 327 will be lost if the application for enforcement of an award of private — be not made within 6 months.—5 W. R. 123.

31. In a suit pending before arbitrators, an appellant who is made a co-plaintiff on application and makes no objection to the —, is bound by the award.—5 W. R. 130.

32. A Civil Court acts illegally in deciding a case on its merits after an — award.—*Ib. See also* 10 W. R. 398.

33. A plaintiff cannot sue for moveables by a suit to enforce an award of —. He may sue for damages and losses sustained with regard to his share of ancestral property, under his general rights of inheritance, whether adjudicated upon by a previous award of — or not; and as regards lands, he may sue either for enforcement of the award or upon his general rights.—5 W. R. 165.

34. An — award cannot change the nature of the claim and convert into a simple debt cognizable by a Civil Court a claim for moneys collected by defendant as *tehseeldar.* Effect of s. 327 Act VIII in such a case.—5 W. R. (Act X) 13.

35. Where all the parties did not agree to an —, the award is legal against those who did.—6 W. R. 25. *See also* 14 W. R. 211. And cannot be converted into a final decree under Act VIII, though it is evidence against any party who agreed to the reference.—15 W. R. 427.

36. An appeal, on the allegation of want of consent of

ARBITRATION (*continued*).

parties, lies from the order of a Lower Court under s. 327 Act VIII directing a private award of — to be filed and enforced.—6 W. R. 60. *See* 15 W. R., F. B., 9; 24 W. R. 188.

37. A plaintiff's allegation in a former suit having been overruled in —, he is not estopped from bringing a fresh suit on the finding of the arbitrators.—6 W. R. 68.

38. Possession under a private award of — would suffice to make the award valid, under cl. 3 s. 3 Reg. VI of 1813, without the intervention of the Courts.—6 W. R. 94.

39. When a case which has been referred in the Principal Sudder Ameen's Court to —, is withdrawn by the Judge for trial in his own Court, the Judge is not bound to refer it to —.—6 W. R. 290.

40. An order rejecting an application to file an award under s. 327 Act VIII is not a decree, and is therefore not appealable.—(F. B.) 6 W. R., Mis., 83; 7 W. R. 401; 11 W. R. 57; 12 W. R. 85. *But see* 14 W. R. 255: 15 W. R., F. B., 9; 21 W. R. 182. Even though the order awards costs.—11 W. R. 104.

41. An award of — will not be invalidated by reason of one of the persons interested having become a lunatic after the proceedings before the arbitrator were substantially concluded and before the final publication of the award. —7 W. R. 5.

42. Where both parties could not agree in nominating an arbitrator and the Judge nominated one under s. 314 Act VIII, it must be inferred that he did so at their desire. —7 W. R. 13.

43. A judgment of a Court given in accordance with an award of —, is final under s. 325 Act VIII even if there has been corruption and misconduct on the part of the arbitrators.—7 W. R. 205; 8 W. R. 171.

44. A private award may be valid and binding, though no proceedings under s. 327 have been taken to enforce it. —7 W. R. 269. *See also* 9 W. R. 441. 20 W. R. 420.

45. Submission to — is revocable before award made.—*Ib.* Not arbitrarily but for good cause; the fact of one of the parties to the agreement revoking his submission is not a sufficient cause within the meaning of s. 326 Act VIII. —(P. C.) 10 W. R., P. C., 51; 15 W. R. 331; 21 W. R. 395; 22 W. R. 522.

46. Where parties do not agree to be bound by the act of the majority, the award must be unanimous.—7. W. R. 269, 19 W. R. 47. 22 W. R. 129.

47. Arbitrators cannot delegate their powers to others. —*Ib.*

48. S. 323 Act VIII authorizes a Court to remand a case to arbitrators for reconsideration when there are mistakes which it cannot amend under s. 322; and if the arbitrators refuse to reconsider, their award becomes null and void without proof of corruption or misconduct under s. 324.—7. W. R. 406.

49. The neglect of some of the arbitrators is misconduct within the meaning of s. 324.—8 W. R. 171. *See also* 22 W. R. 418.

50. A Small Cause Court has jurisdiction, under s. 327 Act VIII, to entertain an application to file a private — award relating to a debt not exceeding the amount cognizable by such Court if the defendant resides within its jurisdiction.—10 W. R. 85. *See* 13 W. R. 233.

51. Under s. 313 Act VIII, all parties materially interested must concur in the reference to —.—10 W. R. 171.

52. Where a reference to — fixes no time for the arbitrators to make the award, the award itself falls to the ground.—10 W. R. 206.

53. Effect of an award arrived at in a pending suit otherwise than upon a reference made by consent of all the parties.—10 W. R. 463; 19 W. R. 321.

54. Where the reference fixes no time for the award to be made, either party may hasten the proceedings by giving notice to the arbitrators that the award must be made, and an umpire appointed, within a reasonable time; but when the time elapsing after the notice has been actively employed by the arbitrators, and the delay has been owing to necessity which they could not control, the parties cannot recede from their submission by reason of the notice.—(P. C.) 10 W. R., P. C., 51.

55. An — award is not legal if not signed by the arbitrators sitting together at one place and at the same time. —11 W. R. 433; 12 W. R. 397.

56. A Court may under s. 320 Act VIII look into the whole of an — record and set aside the award on reasonable presumption of misconduct (*i.e.* because it was in opposition to the testimony of witnesses whom the arbitrators accepted and believed).—12 W. R. 93. *See* 22 W. R. 447.

57. Where the order of the Court which made the reference to —, declining to pass judgment according to the award, is reversed in appeal, the Lower Appellate Court's order is open to special appeal, s. 325 applying only to the Court by which a case is referred to —.—*Ib.*

58. An — award must be one single instrument complete in itself.—12 W. R. 397.

59. A judgment passed within the time allowed by s. 324 Act VIII, viz. 10 days after the submission of the award to the Court, is not a final judgment under s. 325.—*Ib.* *See also* 20 W. R. 311.

60. An arbitrator should not allow documents entrusted to him by the Court to be removed from the *nuthee*, but the award should, under s. 320 Act VIII, be accompanied by all the proceedings, depositions, and exhibits in the suit.—*Ib.*

61. Although no appeal will lie under s. 325 Act VIII against a judgment passed according to the award as prescribed in s. 327, an appeal will lie, under s. 11 Act XXIII of 1861, against an order made in execution proceedings taken upon that judgment.—13 W. R. 62.

62. A case cannot in special appeal be sent back to the arbitrators with a provision for difference of opinion, where the arbitrators having given in different awards, the case was tried anew by the first Court, whose decision has been affirmed by the Lower Appellate Court.—14 W. R. 150.

63. Where matters in dispute are referred to — and it is found that one question at issue is omitted from the reference and that the award contains no decision thereon, the party interested should bring the omission to the notice of the Court; if he fails to do so, the Court may pass any order or come to any decision on that point.—14 W. R. 247.

64. An application to enforce an — award under s. 327 Act VIII may be made without any valuation of the suit. —14 W. R. 255.

65. An order of a Civil Court setting aside an — award, being an interlocutory order, is not open to an appeal immediately; but when the Court sets aside the award on the ground of misconduct on the part of the arbitrator, and after hearing the case on its merits, makes its decree in favor of the plaintiff, it is competent to the defendant to appeal against that decree.—14 W. R. 327. *See also* 22 W. R. 420.

66. S. 323 Act VIII does not authorize a Court to remit a case to the arbitrators except as to matters in difference between the parties.—14 W. R. 469.

67. An arbitrator has full power to retract his resignation of office before it is accepted.—15 W. R. 37. *Held* by the Privy Council that an arbitrator who first tendered and then withdrew his resignation, did not formally divest himself of his character of arbitrator, and was therefore not *functus officio* when he signed the award.—(P. C.) 23 W. R. 429.

68. An award of arbitrators on a matter not in difference between the parties nor referred to them, is null and void for want of jurisdiction notwithstanding that it has been confirmed by a judgment of Court passed in accordance therewith.—15 W. R. 172.

69. A Moonsiff has no jurisdiction to entertain an application and pass an order on the enforcement of an — award relating to the determination of rent.—15 W. R. 556.

70. It is very doubtful whether a Judge has power, under Act X, to refer a case to —.—16 W. R. 160.

71. The mere absence of a clause in the order of reference to —, providing for a difference of opinion between the arbitrators, cannot vitiate the award where there is no such difference of opinion.—17 W. R. 30.

72. An Appellate Court is competent to refer cases to —. —17 W. R. 31. *But see* 19 W. R. 321, and 83 *post*.

73. What a party must do who contests the validity of an award on the ground that it was not completed within the time fixed by the Court.—*Ib.*

74. An — award is not binding on an intervenor as a decree in a suit disposed of by a regular suit.—17 W. R. 233.

75. The addition, in a judgment according to an award, of a trifling direction upon a matter not referred to the arbitrators, which was quite separable from the other parts

ARBITRATION (*continued*).

of the award, and did not affect the decision on the matter referred, was held not to affect the finality of the judgment according to s. 125 Act VIII.—17 W. R. 352.

76. A reference to — made under an order of Court cannot be revoked at the instance of a party.—17 W. R. 516.

77. If an — award is set aside and the matter is tried as a suit, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made before him.—*Ib.*

78. An appeal lies when an — award is questioned on the ground of there having been no valid submission to —. —19 W. R. 47.

79. Nothing which passes between the parties to a suit in any attempt at arbitration or compromise should be allowed to effect the slightest prejudice to the merits of their case as it eventually comes to be tried before the Court.—20 W. R. 172.

80. No presumption can be raised against a party to a suit from his refusal to withdraw from the determination and submit to arbitration.—*Ib.*

81. A decree was held to be in accordance with the award and therefore final under s. 325 Act VIII, although it did not embody a suggestion of two out of the three arbitrators, which suggestion the first Court dealt with as mere surplusage.—20 W. R. 226.

82. A Court was held to have done right in refusing to permit the filing of an — award which was not complete in itself, and which, as a whole, the parties had not agreed to.—21 W. R. 182.

83. An Appellate Court has no power to refer a case to — even on consent of the parties.—(F. B.) 21 W. R. 210.

Nor can the first Court, by consent of parties, refer so much of the matter in dispute which it has already determined and which is pending in appeal.—22 W. R. 207.

An Appellate Court, in remanding a case under s. 354 Act VIII, cannot direct the first Court to call upon the parties to agree to —, or on their failing to do so, to appoint arbitrators.—22 W. R. 396.

84. S. 327 Act VIII incorporates the provision in s. 325 as to the finality of the judgment given according to the award, and puts the award filed under s. 327 in the same position as the award filed under s. 325. Where a Court files an — award and passes a decree, that decree is final. —21 W. R. 248.

85. The word "date" in s. 327 does not mean the day written in the award, as when it was made; but the time when it is handed over to the parties so that they may be able to give effect to it.—*Ib.*

86. As long as the order of a Moonsiff quashing an — award subsists in full form, the award cannot be said to exist as a binding award between the parties.—21 W. R. 261.

87. When a private award between parties is filed in a Court under s. 327 Act VIII, the prescribed course under s. 325 is for the Court to give judgment and pass a decree, and not to order execution before such decree has been passed.—21 W. R. 295.

88. When sufficient cause is shown against a private award, the Court may refuse to enforce it under s. 327 Act VIII.—21 W. R. 377.

89. Where after a reference of certain suits to —, the parties withdrew the first submission and agreed to submit the same suits with other matters to —, and before the arbitrators so appointed had arrived at a final conclusion, the parties by *solehnamah* compromised the whole of the subjects of dispute, and an award was drawn up according to this compromise, a decree corresponding with the award was at first made only in those suits which had been originally referred, and afterwards, on the application of some of the parties, the effect of a decree was given to the remainder of the award,—*Held* that this application to give effect to the unenforced portion of the award ought to have been dismissed, but that as the parties concerned did not take steps to set the Lower Court right in this matter (*inter alia*), the High Court could not interfere, and that the effect of the Lower Court's decision was to dispose of the award altogether and not to divide it into two parts of which one might form the foundation of a future judgment.—22 W. R. 129.

90. Where an Appellate Court directed the first Court to call upon the parties to agree to — and the parties waived the irregularity and consented to the matter being tried by arbitrators,—*Held* that they could not afterwards on special appeal object to the proceedings.—22 W. R. 396.

91. Where an — failed and the record came back to the Court, the Court was held to have no power to dismiss the suit without giving notice to the parties or fixing a date for the hearing of the suit.—23 W. R. 21.

92. Ss. 312 and 325 Act VIII are enabling, and were not intended to be restrictive or exclusive. Parties, who are *sui juris*, are competent, before decree, to make any agreement as to the settlement of the suit.—24 W. R. 41.

93. Where an arbitrator imported into his proceedings a previous enquiry alleged to have been made by him, and relied upon admissions made in the former proceedings, his award was held to be bad and the decision based thereon set aside.—24 W. R. 81.

94. The appointment of an umpire under s. 316 Act VIII is required, where there are two or more arbitrators, to provide for any difference of opinion amongst them; but not where, with the consent of the Court, only one arbitrator has been appointed.—25 W. R. 11.

95. On an application under s. 327 Act VIII to have an award filed in Court, it was held that the word "award" as used in the plaint must be taken to include the whole document which is scheduled to the plaint, *i.e.*, the formal judgment as well as the decree,—also that the earlier sections of the Act are not incorporated into s. 327 as they are into s. 326, and that the words "sufficient cause" in s. 327 should be taken to comprehend any substantial objection which appears upon the face of the award or is founded on the misconduct of the arbitrators or on any miscarriage in the course of the proceedings or upon any ground which would be considered fatal to an award on an application to the Courts in England.—(P.C.) 26 W. R. 10.

96. Both parties having agreed to the appointment of arbitrators to determine their rights in dispute according to the terms of a will, and it being contended by the appellant that it was miscarriage on the part of the arbitrators to make their award without having had the whole of the will before them, their lordships came to the conclusion that, as the appellant, having a clear knowledge of the circumstances on which he might found an objection to the arbitrators' proceeding to make their award, did submit to the — going on and allowed the arbitrators to deal with the case as it stood before them, taking his chance of the decision being more or less favorable to himself, it was too late for him, after the award had been made, and on the application to file the award, to insist on this objection to the filing of the award.—(P.C.) *Ib.*

See Evidence (Admissions and Statements) 24.
Interest 98, 110.
Limitation 222.
,, (Act XIV of 1859) 268.
Notice 27.
Onus Probandi 59.
Partition 2, 23.
Partnership 1.
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Principal and Agent 16.
Privy Council 10.
Punchayet 1.
Purchase-money 1.
Registration 152.
Relinquishment 21.
Set-off 7.
Small Cause Court 46.
Special Appeal 82.

Armenians.

See Husband and Wife 6.

Arms.

1. The issue of summons and warrant of arrest against a person for the possession of — without a license under Act XXXI of 1860, was quashed as illegal.—18 W. R., Cr., 1.

2. The mere possession of — without a license in Gya

ARMS (*continued*).

was held to be no offence under Act XXXI of 1860, the provisions of s. 32 of that Act not having been extended to that district.—18 W. R., Cr., 26.

Arrest.

1. A Government brig employed in supplying pilots to vessels at the Sandheads was arrested under proceedings *in rem*. *Held* that the brig, by the 21 and 22 Vic. c. 126, had become the property of the Crown, and, as such, was entitled to the same exemption from — as all other Queen's ships, and that the proceedings *in rem* were therefore illegal.—1 Hyde 253.

2. Applications under s. 75 Act VIII of 1859 for a warrant to — defendant must show at least that defendant is about to leave the jurisdiction, and be supported by sufficient evidence.—2 Hyde 181.

3. Women of rank are exempted from — in execution of a decree.—2 W. R., Mis., 33.

4. Officers arresting under civil process judgment-debtors cited as witnesses, are not protected under s. 78 Act XLV of 1860.—3 W. R., Cr., 53.

5. Under s. 21 Act VIII exemption from — on process of execution does not extend to all women of rank, but only to those therein described.—8 W. R. 282. *See* 7, *post*.

6. A judgment-debtor against whom immediate execution is granted under s. 19 Act XI of 1865 is not protected from — going from and coming to Court, nor is he entitled to a refund of the debt paid by him to release himself from — when the — was made on his way to or from Court.—9 W. R. 549.

7. *Purdanusheen* women, or women who, according to the usage of the country, ought not ordinarily to be compelled to appear in public, are not exempt from — under s. 21 Act VIII or any other rule of law.—(F. B.) 10 W. R., F. B., 21.

8. S. 140 Act XXV of 1861 does not apply to a case of — for dacoity made without warrant by a subordinate police officer in the presence and on the responsibility of the head constable.—11 W. R., Cr., 20.

9. It is not within the competence of a Judge to direct the re- — of a judgment-debtor without any petition or motion of the decree-holder to that effect.—15 W. R. 68.

10. A warrant for the — of a person on a charge of abduction, without stating the intent, is bad.—15 W. R., Cr., 4.

11. In the absence of any valid reason to the contrary, execution may be taken out by means of a warrant for the — of a minor's person.—17 W. R. 374.

12. The force of a warrant of — is at an end when the prisoner is brought before the Magistrate.—17 W. R., Cr., 55.

13. Procedure with regard to a person arrested under warrant.—20 W. R., Cr., 23.

See Adjustment 11.
Arms 1.
High Court 59, 97.
House Trespass 1.
Insolvency 6.
Jurisdiction 75, 318, 352, 370.
Municipal 16.
Practice (Execution of Decree) 103, 105, 108, 154, 205, 215.
Representative 5.
Stolen Property 5.
Torture 2.
Warrant.
Wrongful Confinement 3.

Ascetic.

See Byragee.
Certificate 81.
Endowment 16.

Assam.

Judicial Commissioner of Assam. *See* Lunatic 2.
Minor 26.
Succession 2.

See Breach of Contract 12.
Endowment 32.
Hindoo Law 14.
Lakheraj 36.
Limitation (Act XIV of 1859) 10, 61.
Pottah 228.

Assault.

1. If several persons apprehend a man and take him to the thannah on a charge of theft, and some of them — him in the presence of the others, all are not consequently liable as principals.—(F. B.) 5 W. R., Cr., 45.

2. A Collectorate peadah deputed to keep the peace during a distraint, acts in the execution of his duty from the time the duty was entrusted to him until he wholly executes it; and an — committed on him whilst going to the spot to carry out the duty is an offence under s. 353 Penal Code.—13 W. R., Cr., 49.

3. An — made by parties proceeding together and acting in conjunction as to time, place, and —, is a single act, and the cause of action one common to all the parties.—14 W. R. 419.

4. Where two persons join in beating a man, and he dies, it is not necessary to ascertain exactly what the effect of each blow was.—23 W. R., Cr., 11.

See Abetment 4, 9.
Charge 1.
Compounding 1.
Culpable Homicide (not amounting to murder) 1.
Damages 21, 25, 37, 51, 56, 96, 102.
Dismissal of Complaint 14.
Grievous Hurt 2, 3.
Imprisonment 2.
Jurisdiction 505.
Murder 1.

Assessment.

1. A lease was granted for 15 beegahs of land within specified boundaries, with a condition for reduction of rent if the land should prove to be less than 15 beegahs. *Held* that the lessor had no right to assess lands within the boundaries in excess of 15 beegahs.—3 R. J. P. J. 24.

2. A landlord is entitled to — in respect of trees as being the produce of the soil, but not in respect of profits realized from the use of shops, stalls, and huts erected by the tenant for the accommodation and convenience of pilgrims frequenting a fair annually held on the land in honor of an idol which the tenant has there.—1 W. R. 45 (3 R. J. P. J. 159).

3. Waste and uncultivated lands not liable to —.—1 W. R. 56.

4. Excess lands may be assessed at rate already paid for lands of the same quality without reference to rates on adjacent lands.—1 W. R. 93.

5. A suit for — of rent upon land paying no rent at all is not a suit for enhancement of rent.—18 W. R. 163.

See Abatement 25.
Amaram Grants 1.
Appeal 148.
Auction Purchaser (Revenue Sale) 4.
Churs 1, 48, 49, 72.
Damages 53.
Ghatwals 7, 18, 21.
Jurisdiction 103, 120, 190.
Khas Mehal 3.
Kuboolcut 48.
Lakheraj 8, 12, 15, 16, 17, 20, 32, 38.
Limitation 100.
" (Act XIII of 1848) 12.
" (Act XIV of 1859) 65, 75.
Mesne Profits 86.
Mokurruree Tenure 2, 12.

ASSESSMENT (*continued*).

See Notice 8.
Onus Probandi 24, 38, 41, 52, 85.
Practice (Possession) 22.
Rent 29, 37, 42, 48, 51, 52.
Resumption 6.
Under Tenures 4.

Assessors.

1. The grounds of each assessor's opinion should be distinctly recorded by the Judge.—3 W. R., Cr., 6 (4 B. J. P. J. 422).

2. To give the grounds of their opinions particularly when they differ in opinion from the Judge.—3 W. R., Cr., 21.

3. On view by — of scene of offence, Judge cannot delegate to — the function of examining witnesses.—5 W. R., Cr., 59.

4. It is the duty of the Judge to notice to the — discrepancies and contradictory statements made by witnesses.—5 W. R., Cr., 70.

5. The order of a Sessions Judge under s. 354 Act XXV of 1861, fining an assessor, is not appealable, nor liable to be interfered with by the High Court under s. 404.—8 W. R., Cr., 83.

6. No legal conviction can take place unless the opinion of the — is taken on the whole of the evidence in a case.—15 W. R., Cr., 3.

7. There is nothing in Act XXV of 1861 to prevent a Judge from summing up the evidence in trials with the aid of —.—15 W. R., Cr., 25.

8. Where an accused is tried on two charges, the — should, under ss. 255 and 261 Act X of 1872, give a definite opinion whether he is guilty of either of the offences charged, and if so of which, and the Judge, in delivering judgment, should give it with advertence to the opinions of the —.—22 W. R., Cr., 34.

9. Mode of choosing — explained.—23 W. R., Cr., 35.

See Adultery 5.
Conviction 6.
High Court 32*a*, 133.
Judgment 6.
Land taken for Public Purposes 15, 24, 25.
Practice (Criminal Trials) 33.

Assets.

See Hindoo Law (Coparcenary) 100, 101.
Onus Probandi 16.
Partition 7*e*.
Representative 5.

Assignment.

1. A sum receivable by way of — is not liable to be attached and sold in execution of decree.—2 Hay 142.

2. A joint debt cannot be amalgamated by a colorable — with a personal debt, so as to give the assignee the right to sue in respect of both debts.—1 Hyde 169.

3. An — made *bonâ fide* and for valuable consideration, before execution put in, and without notice of claim of execution-creditor, was held not to be void under the statute 13 Eliz. c. 5.—1 Hyde 178.

4. Of chose in action.—*See* Champerty, 1, 5, 7, 8, 9, 10.

5. A creditor who accepts the — of a debt due by third parties to a debtor and releases the latter, has no action against him.—5 W. R. 171.

6. The system of — of decrees is universally recognized by the practice of the Courts in India as well as by Act VIII itself; and it has never been held that a person, taking the rights of a decree-holder by — for valuable consideration, takes them subject to the equities or liabilities of the decree-holder to the judgment-debtor on account of other claims of which he had no notice.—5 W. R., Mis., 22. But *see F. B. ruling in* 6 W. R., Mis, 72; also *ib.* 73. *See* also 7 W. R. 205.

7. The right of set-off in the case of two cross-decrees is not affected where the — of one of them has been found to be fraudulent.—7 W. R. 470.

8. *Quære.*—Whether, had the — been a *bonâ fide* one, the assignee would have taken the decree subject to the equities or liabilities of the decree-holder to the judgment-debtor.—*Ib.*

9. When a judgment creditor seeks to attach and sell a decree alleging that its — was not *bonâ fide*, and the conveyance purports to be one of property specified in s. 265 Act VIII, it is the duty of the Judge under s. 246 to make the enquiry whether the assignee was or was not in *bonâ fide* possession. If the Judge enquire into the facts, no appeal lies from his order. If he refuses to make an enquiry, the High Court, under its general powers of superintendence, can and ought to require the Judge to do so.—8 W. R. 26.

10. A decree-holder liable to judgment debtor on account of a cross-decree, cannot assign his decree until the respective liabilities of the two parties have been settled.—8 W. R. 202.

11. Plaintiff purchased a debt due from defendant to R, and defendant had a decree against R for a certain sum arising out of the same transaction. In a suit by plaintiff against defendant for the debt so purchased,—*Held* that defendant might set-off the amount of his decree—10 W. R. 380.

12. The Court is not bound to admit the assignee of a decree to execution thereof. If there is no dispute, or if it can decide the dispute, it may admit him to carry on the decree.—13 W. R. 207.

13. There is no prohibition or rule of law which forbids the — of a decree under Act X any more than another decree.—11 W. R. 215.

14. Where the rents of a share with specified boundaries have been assigned by one shareholder absolutely, by no arrangement between him and his co-sharers, without the assent of the assignee, can the latter's rights to collect rents be affected. -17 W. R. 17.

15. Where assignees sued the assignor for property never in his possession, and for declaration of right to ownership in other property already in the possession of one or more of themselves,—*Held* that the assignor at the time of the — not being in actual or constructive possession could not possess the property, the bill of sale being only evidence of a contract to be performed on the happening of a contingency; that, as two of the assignees had given no consideration for the alleged contract whilst the third had, the suit was bad for misjoinder; and that even if the third could insist on specific performance, as her vendor was the assignor jointly with a co-assignee, she could not have her right adjudicated in a suit in which the assignor alone was defendant.—21 W. R. 101. *See* 22 W. R. 99, 535.

See Appeal 148.
Auction Purchaser (Execution Sale) 35, 41.
Benamee 11.
Contract 32.
Conveyance (Transfer and Assignment).
Cross Decrees 7, 8.
Damages 11, 103.
Debtor and Creditor 4.
Ejectment 12.
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Enhancement 26.
Evidence (Estoppel) 55, 1[illegible].
Jurisdiction 25, 50, 214, 245, 265, 343, 350, 383, 448.
Landlord and Tenant 3, 23, 33, 36, 59.
Limitation (Act XIV of 1859) 99, 219, 220.
Mortgage 9, 33, 38, 248, 252, 258.
Onus Probandi 66.
Partition (Butwarra) 38.
Practice (Execution of Decree) 167, 236, 258, 265.
" (Possession) 3.
Registration 55.
Reversioner 9.
Voluntary Payment 1.

Attached Property.

1. A claim to — under s. 246 Act VIII is virtually a suit for land.—1 Hyde 136, 9 W. R. 199.

2. The proper course to be adopted by a third party desirous of setting aside an order of attachment, is not to proceed by motion, but to give notice of claim which can then be investigated as laid down in s. 246 Act VIII of 1859.—2 Hyde 22.

3. In the event of a claimant appearing for —, the Court will in its discretion postpone all other business and give precedence to the hearing of the claim.—*Ib.*

4. The day on which judgment is pronounced is not to be reckoned within the time allowed for bringing a suit under s. 246.—W. R. Sp. 321, 22 W. R. 68.

5. S. 243 Act VIII of 1859 gives no authority to a Court to give a lease or mortgage of —, but only to give time to the judgment-debtor to mortgage or let his land, or sell a part of it when he can satisfy the Court that there is reasonable ground to believe that the amount of the decree will be raised thereby.—W. R. Sp., Mis., 5.

6. The sale by a judgment-debtor of property after it has been attached by another, is not valid.—1 W. R. 212.

7. It is discretionary with a Court, under s. 243 Act VIII, to appoint a manager, and to allow a debt to be paid by degrees.—1 W. R., Mis., 15. *See* 12 W. R. 66. The discretion must be exercised reasonably.—11 W. R. 505. And not unless there is a reasonable probability of the debt being discharged within a reasonably short period.—21 W. R. 146.

8. Where a claim to — is made under s. 246 and an investigation is refused under s. 247, the claimant, in bringing a regular suit to prosecute his claim, is not bound, either by any provision of Act VIII or by cl. 3 or 5 s. 1 Act XIV of 1859, to institute his suit within one year from the date of the order disallowing the investigation.—2 W. R. 263, 5 W. R. 123. *See also* 7 W. R. 252, 8 W. R. 73.

9. The decree-holder by whom the property is first attached, and not the decree-holder at whose instance the sale takes place, is the party entitled to be first paid under s. 270 Act VIII.—2 W. R., Mis., 48. *See* 9 W. R. 514.

10. An attachment of land under s. 3 Act IV of 1840 can only be withdrawn by the officer who attached the property.—2 W. R., Cr., 32 (1 R. J. P. J. 168).

11. S. 246 Act VIII is prospective, and does not apply to past proceedings in execution under the old procedure. —3 W. R. 62. *See* W. R. Sp. 237, 7 W. R. 138, 9 W. R. 292.

12. A *bonâ fide* purchase for good consideration of — belonging to two debtors, cannot avail to pass the rights of both when the sale is made by one of them in whose name the property stands.—3 W. R. 171.

13. In a suit to establish a right to — under s. 246 Act VIII, if the plaintiff fails to make out his claim of right, he is not entitled to a decree on the ground that the order of attachment was made without jurisdiction.—4 W. R. 99.

15. The purchaser from a judgment-debtor cannot take advantage of an order obtained by the judgment-creditor under s. 246 Act VIII, to which he was an entire stranger. —6 W. R. 137. *See* 17 W. R. 480.

16. There is nothing restrictive in s. 246 Act VIII; it comprises *all* claims or objections to the sale of lands attached in execution.—6 W. R. 164.

17. Where a person, claiming — under a bill of sale, once sets up that two of the judgment-debtors are not minors, and it is found that they are minors, he cannot afterwards be allowed to set up an opposite case and claim the shares of the minors on the ground that the sale to him was to satisfy an ancestral debt.—6 W. R. 239.

18. Where property is seized as belonging to A as representative of B deceased, and A claims the property as his own and denies that it ever belonged to B or B's estate, A's claim is purposely dealt with under s. 246 Act VIII. —6 W. R., Mis., 61. *See* 20 W. R. 280.

19. Where under s. 246 — is ordered to be released, the order for release is made with reference merely to the particular claimant who has obtained the order.—8 W. R. 27.

So also an order disallowing a claim.—21 W. R. 230.

20. In disposing of a claim under s. 246, if the Court be of opinion that the property ought not to be sold, the proper order to be made is an order for the release of the attachment.—8 W. R. 93.

21. The Court need not, under s. 246, investigate the claim of a third party to a portion of —, but should treat him as a defendant with reference to whether judgment-debtor is in possession; s. 246 applying only where judgment-debtor has no possession.—8 W. R. 358, 362 (*overruled by F. B.*) *See* 26 *post*, and *see* 35 *post* and 11 W. R. 528.

22. Where some of the objectors to the sale of immoveable property in execution of a money-decree compromised with the decree-holder, who then applied that the properties in possession of the rest should be sold, and the Lower Court ordered rateable payment by these, it was held, on appeal by the decree-holder against the original judgment-debtor, that s. 246 applied to the case inasmuch as it sought to enforce a particular remedy against a third party and not against the original defendant.— 8 W. R. 378.

23. Where the attachment of a judgment-creditor which subsisted to date of sale subsequently fell in, the judgment-creditor whose attachment subsists at the time of sale is, under s. 270 Act VIII, entitled to the whole of the sale-proceeds.—8 W. R. 415.

25. S. 246 is not expressly extended to rent-suits in Bengal; but as it is incorporated with ss. 81 to 90 which are so extended by s. 16 Act VI of 1862 (B.C.), it applies to such suits. Thus it was held appliable to the claim of an intervenor in a suit for rent in which the landlord attached certain growing crops.—10 W. R. 21.

26. In a case of claim under s. 246 Act VIII, the claimant should begin, and the evidence should be confined to his own title or possession, and not to that of any one else, the *onus probandi* being on him and not on the execution-creditor.—(F. B.) 11 W. R., F. B., 8. *See also* 20 W. R. 345.

Where the Court disallows the claim by reason of the claimant not having given any evidence in support of his claim, or not having been present when it was his duty to appear and give evidence, the only thing the Court can do is to make an order under s. 246 disallowing the claim.— 21 W. R. 409, 24 W. R. 411.

Before passing an order under s. 246, the Judge is bound to receive the evidence which the claimant seeks to adduce. —24 W. R. 422.

27. In attaching property, a reasonably accurate description of the property is all that is required by s. 214 Act VIII.—(F. B.) 11 W. R., F. B., 8.

28. A sale or other private alienation of — during the continuance of an attachment is void, under s. 240 Act VIII, only as against the attaching-creditor and those who claimed under or through the attachment.—(F. B.) 11 W. R., O. J., 1 (*affirmed by P. C.*) 17 W. R. 313. *See* 12 W. R. 457, 13 W. R. 134, 14 W. R. 25.

29. The right to be established in a suit under the concluding clause of s. 246 Act VIII, must be substantially the same right as that for which the party had contended in the execution.—11 W. R. 40.

30. Where plaintiff, after unsuccessfully resisting under s. 246 Act VIII an order for the sale of his property, sues to establish title, and proves peaceable possession for more than twelve years, he is entitled to a decree.—11 W. R. 467.

31. In suits under s. 246 Act VIII, the question to be tried is that of right or title, and not merely that of possession.—11 W. R. 482.

The intervenor has no right to set up any irregularities in the execution as an answer to the execution-creditor's claim of title.—24 W. R. 394.

32. Where the right, title, and interest of a debtor in certain moveable property claimed by B as part owner under s. 246 Act VIII, is sold in execution, the judgment-creditor is not liable. The purchaser becomes entitled to an undivided share to be used as such, and is not liable to be the owner of the other undivided share, merely for using it.—11 W. R. 528. *See* 14 W. R. 120.

33. In a case of intervention under s. 246 Act VIII, where the — is found to be the sole property and in sole possession of the intervenor, it should be at once released and the decree-holder referred to a regular suit.—12 W. R. 41.

The Court acts without jurisdiction if, instead of so referring the decree-holder to a regular suit, it at once decides on the decree-holder's right to proceed against the — .—18 W. R. 402.

34. Where the same property attached under different decrees is released upon the claim of an objector under s. 246 Act VIII, the success of one attaching creditor, who brings a suit against the objector and establishes the right

ATTACHED PROPERTY (*continued*).

of the judgment-debtor, inures to the benefit of all the attaching-creditors.—12 W. R. 221.

35. Where a claim is preferred to, or an objection offered against, the sale of an undivided fractional part of lands or other immoveable property attached in execution of a decree, the claim is one which can be adjudicated upon under s. 256 Act VIII.—(F.B.) 13 W. R., F.B., 63. *See also* 17 W. R. 74.

So also as to a claim to a share of moveable property.—14 W. R. 52.

36. Where an application under s. 246 Act VIII has been disallowed, the Court's order declaring that the applicant has no right to remain in possession, is judicious and proper.—13 W. R. 431.

37. In a suit to set aside a summary award under s. 246 Act VIII, a Judge is bound to find facts upon the evidence tendered and taken in the case, and not upon any evidence taken in the summary cause.—14 W. R. 95.

38. Where the success of a party in summary proceedings under s. 246 Act VIII is grounded on his being in possession of the — as of his own right, that is a sufficient cause of action.—15 W. R. 346.

39. Where a claim to — under s. 246 Act VIII is dismissed or struck off without adjudication, a fresh claim by the same claimant within a reasonable time may be entertained subject to the provisions of s. 247.—16 W. R. 59.

40. What plaintiff must be prepared to prove in order to maintain a suit under s. 246 Act VIII, by which it was never intended that the time of the Court should be taken up with an useless enquiry apart from any claim for compensation or possession.—17 W. R. 304.

41. A Magistrate may lease land attached under s. 319 Act XXV of 1861.—17 W. R., Cr., 38.

42. The issue of an injunction under s. 92 Act VIII was held not justifiable in a suit brought under s. 246 to establish plaintiff's right to certain — upon the refusal of his claim thereto; his proper course being to present a further petition in the execution case representing that he had brought a suit and praying for postponement of the sale.—20 W. R. 11, 24 W. R. 70.

43. Where a claim made under s. 246 Act VIII is withdrawn, it cannot be revived; and if the claimant is in possession, and proves no hostile acts on the part of the opposite party invading his title, he has no cause of action. —20 W. R. 456.

44. On an application being made under s. 246 Act VIII a Court charged with the execution of a decree, the only question to be determined is whether or not the judgment-debtor was in possession of the — at the time when the attachment was made.—21 W. R. 56.

45. Where certain property was released from attachment on a claim made under s. 246 Act VIII, and the attaching-creditor brought a suit and obtained a decree establishing his right of attachment,—*Held* that the effect of that decree was to set aside the order of release and to make the property still subject to the attachment.—21 W. R. 435.

46. In a suit to establish a claim to property which had been attached in execution of a decree obtained by one defendant against another, which plaintiff alleged to be collusive,—*Held* that the plaint disclosed no cause of action.—22 W. R. 389.

47. Where a suit resulted in two distinct orders for the payment of costs, one against the first set of defendants and another against the second, and the property of one of the former set was taken in execution of the order against the latter,—*Held* that the application of the aggrieved defendant for the release of his property fell within s. 246 Act VIII.—22 W. R. 392.

48. An applicant for the release of — under the same section has a right to establish what the law requires by any evidence sufficient for the purpose; and the Court has no power to require from him any particular kind of evidence.—*Ib.*

49. Not the decree-holder who first attaches without any intention of selling the —, but the decree-holder who first applies for the sale of it, is the person who comes under s. 270 Act VIII and is entitled to a payment in full.—22 W. R. 466.

See Absconding Offender.
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Attgurh Raj.

1. According to the *Pachees Sawal*, a brother of the Rajah of Attgurh, one of the Tributary Mehals of Cuttack, has a preferential title over the Rajah's son by a *phoolbebahi* wife to succeed to the Rajah's estate.—3 W. R. 116.

2. The effect of a devise of his estates by a Rajah would be to alter the course of succession, and therefore contrary to s. 3 Reg. XI of 1816.—*Ib.*

Attorney and Client.

1. If a client places himself in the hands of an attorney, he places himself in his hands in regard to all matters having connection with the suit, and the attorney must be held liable for any negligence, even though his client did not take prompt action in the matter.—1 Hyde 134.

2. A vakeel acting under an engagement as a client's mookhtar and legal adviser, is bound by the same rules as regards remuneration, etc., as an attorney.—2 W. R. 307.

3. Where a bond is given by a client to an attorney, not only is the client not estopped from disputing the consideration alleged in it, but the *onus probandi* of the fairness of the transaction lies on the attorney.—*Ib.*

4. A person choosing to act as a mookhtar or legal agent must submit to the same rules by which the dealings of such parties with their clients are regulated.—4 W. R. 86.

5. The interposition of a third party does not necessarily affect the fiduciary relation between — .—*Ib.*

6. A client may dismiss a mookhtar for misconduct notwithstanding that the contract between them is for a fixed period, and without the client being obliged to sue for cancelment of the engagement.—5 W. R., Mis., 18.

7. A client is not bound by the mistaken consent of his pleader to abide by the issues of law erroneously framed by the Judge.—6 W. R., Mis., 53. *See also* 16 W. R. 246.

8. A vakeel's admission during the trial of a suit is legal evidence by which his client is bound, though it is open to the latter to show that the effect of the admission is not such as to invalidate his claim.—9 W. R. 375. *But see* 18

Attorney and Client (*continued*).

W. R. 436. *See* 9 W. R. 485, 10 W. R. 322, 12 W. R. 279, 21 W. R. 332.

It is also admissible as evidence in another case in which the client is a party.—15 W. R. 135.

9. The principle regulating the relation between — applies equally to the relation of vakeel and client.—10 W. R. 469.

10. The rule that the intentional statement of a falsehood in a solemn deed taken by itself without explanation betokens fraud until the contrary is shown, and that it is the duty of a solicitor who has made such a statement to show convincingly the absence of fraudulent motive, can scarcely be applied when a fraudulent motive has not been alleged by any complainant, if the explanation offered be not simply incredible.—(P. C.) 10 W. R., P. C., 43.

11. There is no such special authority in the High Court as would authorize the striking-off of a solicitor from the rolls of the Court, where such a step would not be sanctioned by the practice of the Courts in England. —(P. C.) *Ib.*

12. A vakeel, after acting in regard to the execution of a decree on behalf of a judgment-debtor, must not interest himself with the decree-holder in the purchase of the property.—13 W. R. 209.

13. S. 24 Act II of 1855 does not warrant a vakeel's exclusion from the witness-box, though it may excuse his answering certain questions relating to communications between him and his client.—15 W. R. 340.

14. A judgment deliberately recording the admission of a pleader must be taken as correct, unless it is contradicted by an affidavit or the Judge's own admission that the record he made was wrong,—16 W. R. 107.

15. Admissions by a prisoner's vakeel cannot be used against the prisoner.—17 W. R., Cr., 49.

16. Where a conveyance was made by a native lady without consideration to her mookhtar, it was held that it would be a denial of justice and contrary to public policy to uphold the deed, even if the grantor as plaintiff sued the mookhtar as defendant to set aside the deed; still less where the parties pleading the fraud were defendants and in possession.—19 W. R. 145.

See Barrister 1.
Damages 98.
Mookhtar.
Onus Probandi 183.
Pauper Suit or Appeal 7.
Pleader.
Vakalutnamah.

Auction-Purchaser (Execution Sale).

1. The purchaser at a sale in execution of a decree obtained by a mortgagee in satisfaction of his mortgage-debt, is not bound by leases executed by the mortgagor after decree, unless he has recognized the leases after his purchase by receiving rent from the lessees as such.—W. R., F. B., 40 (1 Hay 266; Marshall 122). *But see* 10 W. R. 325.

2. In execution of a decree in the presence of the widows of the original debtor, the property in dispute was sold as the rights and interests of the widows. *Held* that the auction-purchaser acquired by this purchase the rights and interests of the original debtor in the property, though in the sale-notification those of the widows were advertised to be sold.—2 Hay 8.

So also a mere verbal error in describing the property to be sold as a *putnee talook* instead of a *mourosee ijara* was held not to be such a misdescription as would defeat the rights of the — .—21 W. R. 93.

3. Under a decree in a suit on a bond against the widow of the deceased obligor, property to which her son, of whom she was guardian, was entitled as heir, was sold. In the advertisement of the sale the property was described as that of the widow, and the interest to be sold was described as that of the debtor. *Held* that the purchaser at the sale acquired the property of the deceased debtor in the estate, and had a good title against the heir.—Marshall 614. *See also* (P. C.) 17 W. R. 459, 23 W. R. 174, 301; 24 W. R. 3, 109, (P. C.) 306, 383. *But see* 18 W. R. 55, 22 W. R. 181.

4. An — of a zemindaree is entitled to the rents due from the date of his purchase. If the tenants, after due notice of purchase, continue to pay to the former owner, they do so at their own peril, and cannot plead such payments (even when made under an order of Court in answer to the new owner's suit for rent.—W. R. Sp. (Act X) 6 (2 R. J. P. J. 19).

5. Only such rights and interests as are notified to be sold are those which pass to an — .—Sev. 41.

6. Where, in execution of a decree for costs advanced by Government in prosecuting an appeal, the auction-purchaser bought only the rights of those who had opposed the successful plaintiff in the Privy Council,—*Held* that it was wrong to put up to sale the rights of others whose names had been included in the plaint only because the suit was for a portion of a joint family estate.—Sev. 488.

7. The — of an under-tenure cannot obtain possession under cl. 6 s. 23 Act X of 1859, but must sue in the Civil Court.—3 R. J. P. J. 144, 8 W. R. 240.

8. The title of an — accrues from the date of the sale, and not from the date on which he may obtain his sale certificate. -W. R. Sp. 279 (L. R. 61).

9. The purchaser at a sale in execution of rights pledged for the debt for which the decree was obtained, is not bound by any incumbrance created by the original proprietor subsequent to the pledge.—W. R. Sp. 359.

10. An — is not bound to wait for his rent until he can clear away all fraudulent incumbrances created by his predecessor.—W. R. Sp. (Act X) 57 (2 R. J. P. J. 261).

11. An — of the rights and interests of a cultivator is not bound, under s. 27 Act X of 1859, to notify his purchase to the zemindar.—W. R. Sp. (Act X) 91 (3 R. J. P. J. 19).

12. An — has no greater rights than a purchaser under a decree in Chancery, whose rights are liable to be defeated by a re-opening of the biddings by order of the Court.—W. R. Sp., Mis., 29 (L. R. 57).

13. Where the sale of any lot is completed, the purchaser (whether he be the decree-holder or not) should then and there be required to make the deposit prescribed by s. 253 Act VIII of 1859; failing which the lot should at once be put up to sale at the risk of the first purchaser.—W. R. Sp., Mis., 30.

14. When *pendente lite* a sale of the property of a defendant is effected in execution of a decree, the decree obtained against the judgment-debtor will be void against the — .—1 W. R. 103, 15 W. R. 308. *See* (P. C.) 16 W. R., P. C., 19.

15. Where rights and interests are sold in execution with notice of claims of previous purchasers of a portion thereof, and such previous purchasers are afterwards dispossessed by the heirs of the original owner, the — may sue such heirs for return of the property recovered by them, with mesne profits.—5 W. R. 30.

16. When a sale in execution is set aside, no such rights and interests are left to the — as can be sold on his behalf. —5 W. R. 42.

17. The purchaser of a tenure sold for arrears of rent acquires the tenure free from all incumbrances and under-tenures created by the defaulter.—6 W. R. (Act X) 36. *See also* 3 W R. 127.

18. A purchased B's rights at a sale in execution of a decree of a Civil Court, but found the lands in the possession of C a purchaser at a sale by the Collector's Court. A prayed to be put in possession summarily, alleging C to hold merely *benamee* for B. *Held* that, whether under ss. 227 and 228, or s. 269 Act VIII, A could not proceed summarily but by regular suit.—6 W. R., Mis., 122.

19. Under s. 264 Act VIII, the possession of an — dates from the publication of the sale-certificate and proclamation, not from the date of his taking possession.—7 W. R. 60. *See* 24 W. R. 418. But where proceedings under this section were never acted upon in any way, they were not held to constitute such a possession as would prevent the operation of the law of limitation.—24 W. R. 419 (*foot-note*).

20. Plaintiff purchased two-thirds and defendant one-third of the rights and interests of certain judgment-debtors sold in execution of a decree. Plaintiff paid his own and defendant's quota of the purchase-money, and on defendant's failure to reimburse him, sued for possession of the whole property as sole purchaser. The Lower Court directed defendant to pay his share of the purchase-money to plaintiff with interest, and though the relief thus granted was different from that prayed for, the order was not disturbed in appeal as it did substantial justice.—7 W. R. 180.

21. A person claiming, as — of the rights of another

AUCTION-PURCHASER (EXECUTION SALE) (*continued*).

with whom a rental was settled, to have those rights confirmed and to sue any person who set up a title which threatened to disturb his possession, is entitled to a declaratory decree, and to be registered in the Collector's books as the rightful owner.—8 W. R. 190.

21*a*. A *bonâ fide* — for valuable consideration, and without notice, is not in every case protected from having the sale set aside; but each case must be determined according to its own circumstances.—(F. B.) 9 W. R. 196. He was held not protected in the case of a sale in execution of an *ex-parte* decree upon certain mortgage-bonds in respect of the property of minors after notice, that the mother of the minors challenged the validity of the whole of the proceedings.—20 W. R. 120. *Held* otherwise where he had no such notice.—20 W. R. 123.

22. The auction-purchaser of a ryot's tenure sold by the zemindar in execution of a decree for rent, is not the ryot's vendee, nor bound by any decision to which the ryot was a party, or by an allegation or admission of that party.—9 W. R. 217.

23. Where the rights and interests of a judgment-debtor are sold in execution, the auction-purchaser takes the land to which they relate subject to such mortgages and leases as may be existing.—10 W. R. 384, 24 W. R. 348.

24. Where an — of the rights and interests of the judgment-debtor is obstructed by a third party who has been in possession for a long time, his remedy under s. 269 Act VIII is to sue to establish the title of the judgment-debtor in that property, and not to recover his purchase-money.—12 W. R. 176.

25. Where an — was named in the sale-certificate as "mother and guardian of her infant son P. C.," the title to the property was held to be vested by the certificate in the minor absolutely.—12 W. R. 236. *See* 11 W. R., F. B., 20.

26. Where lands claimed under a certificate of sale as being in one village are found in another, the — may show that there has been a misdescription.—12 W. R. 483.

27. S. 268 Act VIII is solely for the benefit of an —, and no person has any ground to come in under the appellation of purchaser except the party who is complained of as resisting or obstructing the purchaser in obtaining possession. —13 W. R. 466.

28. In cases where the right of inheritance really vests, the purchaser of the rights of a deceased judgment-debtor, whose representatives hold under a certificate under Act XXVII of 1860, does not acquire the entire estate, but acquires it subject to all legal and equitable rights of inheritance.—14 W. R. 418.

29. Where an — claims more than the share of the persons whose rights and interests he has purchased, his suit should be decreed to the extent to which those rights and interests are found to exist, and not be dismissed altogether. —15 W. R. 363.

30. A sale-certificate which in express terms passes to the — the rights and interests of a father, does not necessarily transfer the interests of his minor sons unless the latter have benefited by the decree or sale, in which case the — has to that extent an equitable claim against them— 17 W. R. 454.

31. An — of the judgment-debtor's right, title, and interest, does not thereby acquire any right which the latter might have, to set aside or question the validity of any deed previously made, it might be, by the judgment-debtor himself.—18 W. R. 39.

32. An — of the rights and interests of a former proprietor after the Government revenue had been paid out of collections made by the surburakar, was held entitled to a share of those rents in proportion to the term of her proprietorship.—18 W. R. 44.

33. Where the property of a minor is not described as such, the — acquires no title thereto.—18 W. R. 55.

34. An —, although he may be the decree-holder, must be considered in the position of a purchaser for value.— 20 W. R. 223.

35. An — of a decree *bonâ fide*, without knowledge of a previous assignment of a mortgage interest, is entitled to the proceeds of that decree free from any trust or obligation in favor of the assignees.—20 W. R. 408.

36. An — is "representative in interest" of the judgment-debtor within the meaning of s. 21 Act I of 1872.— 21 W. R. 148.

37. The purchaser of a tenure at a sale for arrears of rent was held liable to rent from the date on which the sale was confirmed, for, until such confirmation, he could not obtain that which is in fact a conveyance to him of the property, viz., the certificate of purchase.—2, W. R. 367.

38. Where a decree-holder who had attached certain land and a house upon it caused the land to be sold in execution and purchased it, and then caused the house to be sold to a third party,—*Held* that he had purchased the land on which the house stood subject to the right of the person who bought the house to have it continued there. 22 W. R. 209.

39. An — under a decree against some members of a joint Hindoo family subject to the Mitacshara law, acquires no right to recover possession of a definite quantity of land.—22 W. R. 214.

40. Although s. 264 Act VIII provides for the assistance of the —, there is nothing whatever to prevent his obtaining possession, if he can, without the intervention of the Court. —22 W. R. 406.

41. The — of the *malikee* right of a judgment-debtor is entitled to possession where such right has been in no way pledged or mortgaged, notwithstanding a deed of assignment from the previous owner directing his tenant to make an annual payment to a creditor of interest due under a bond. 22 W. R. 445.

42. The — of a tenant's rights and interests must, if he wishes to retain the tenure, satisfy any decree for rent for which it is liable, and obtain a transfer in the zemindar's sherish of his name in lieu of the former tenant's.— 23 W. R. 289.

43. The right which an — has, under s. 66 Act VIII of 1869 (B. C.), to do away with under-tenures, cannot be executed without a suit first having been instituted, the mere fact of purchase being insufficient to set aside incumbrances.—25 W. R. 109.

44. Where the first mortgagee after giving up his mortgage lien by accepting a sum of money assessed by a Court as the equivalent of his lien, sells his rights under his decree to another who purchased in execution of that decree what the party from whom he purchased had no right to sell, the sale of such purchase was not allowed to prevail, on the ground of priority of mortgage, as against the purchaser at the prior sale in execution of the second mortgagee's decree. —25 W. R. 251.

45. Though in a suit brought by the — of the right, title, and interest of the first mortgagee against the — of the right, title, and interest of the second mortgagee, to declare the mortgaged property liable for the amount of the plaintiff's mortgage, the defendant in possession would have to pay off the plaintiff in order to retain possession, yet this cannot be in a suit brought to turn the defendant out of possession on the ground of priority of mortgage.—25 W. R. 251.

46. Where a claim under s. 246 Act VIII is rejected, the — should get possession under s. 263 or 264 from the Court executing the decree, but cannot bring a fresh suit for the same.—25 W. R. 372.

47. It is the business of an — to see that his sale certificate conveys to him what he supposes himself to have purchased; and it is not open to him to adduce evidence afterwards to prove that he purchased anything more than what the certificate shows him to have purchased.— 26 W. R. 104.

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Title 15.
Trust 11.
Vendor and Purchaser 52, 71.
Voluntary Payment 6.
Zur-i-peshgee Lease 35.

Auction-Purchaser (Revenue Sale).

1. A mokurruree pottah not being one for one of the protected classes of tenures, is not good against an—. The receipt of rent by the — at the rate specified in the pottah, is no confirmation of an alleged mokurruree tenure. —W. R. Sp. 14 (2 R. J. P. J. 18).

2. Under the general law of limitation, the cause of action in a suit for possession by an — arises from the date of purchase.—W. R. Sp. 30.

3. The title of an — occurs not from the date of sale, but from the date on which the sale was confirmed and certificate granted under s. 20 Act I of 1845.—W. R. Sp. 278 (2 R. J. R. J. 189).

4. An — acquires under s. 54 Act XI of 1859 the former proprietor's right to sue to resume an assess lakheraj land. —W. R. Sp. 293.

5. An — cannot eject a ryot having a right of occupancy, or enhance his rent, except in the manner prescribed by law.—W. R. Sp. (Act X) 111 (3 R. J. P. J. 96).

6. The right of an — to evict under cl. 3 s. 26 Act I of 1845 is barred by possession as a *khoodkasht kudeemee* ryot having a right of occupancy.—1 W. R. 6.

7. S. 37 Act XI of 1859 does not apply to the — of an estate not sold under that Act.—1 W. R. 282.

8. An agreement entered into by the prior owner of an estate sold for arrears of revenue, with the owners of the adjoining estate to divide churs equally, is an alienation of or incumbrance on the purchased estate, and therefore under s. 26 Act I of 1845 void as against the purchaser.— 2 W. R. 191.

9. Purchasers under any of the Sale Laws since Act XII of 1841, may be bound by a decree in a boundary suit against the prior owner.—*Ib.*

10. A certified — suing to recover possession of land from which he has been ousted, is not debarred from the benefit of s. 36 Act XI of 1859 unless he has acknowledged himself to be a *benameedar*.—5 W. R. 56. *See* 10 W. R. 167.

Nor from the benefit of s. 21 Act I of 1845.—14 W. R. 10.

11. The — of the rights of Government in a talook obtained by resumption can have no better title or position than the Government.—8 W. R. 222.

12. The title of an — to avoid an under-tenure and eject a tenant depends on whether the tenure is protected under s. 37 Act XI of 1859 and whether the tenant has a right of occupancy.—12 W. R. 123.

13. The — of a share of an estate sold under s. 13 Act XI of 1859 does not acquire it free of incumbrances or with the right to avoid under-tenures.—12 W. R. 440.

14. Where an — under Reg. XI of 1822 intends to cancel a talookdaree tenure, he must take some clear step to declare the avoidance or cancellation of the tenure.— (P. C.) 13 W. R., P. C., 24. *See also* 23 W. R. 245, 275; 25 W. R. 536.

15. An — with a paramount title under s. 37 Act XI of 1859, acquires the estate free from any incumbrances accruing from the laches of former proprietors.—15 W. R. 552. And is not bound by engagements entered into by persons who have been declared to be trespassers in occupation of land—22 W. R. 126.

16. In the absence of proof to the contrary, such—must be assumed to be the owner.—15 W. R. 552.

17. An — is to be bound not by what is represented to him by the sheristadar and other officers, but by the conditions of sale published by notification in the Official Gazette.—17 W. R. 531.

18. An — is barred by implied acquiescence from pleading that he is not bound by the acts of his predecessor, if he does not question those acts within 12 years from the date of his purchase.—18 W. R. 281.

19. An — of a fractional share of an estate for which a separate account has been opened under s. 11 Act XI of 1859, does not acquire it free of incumbrances under s. 37, but acquires it (according to s. 54) subject to all incumbrances, and acquires no rights which were not possessed by the previous owner.—20 W. R. 264. *See also* 23 W. R. 387.

20. The rights conferred upon an — under s. 37 Act XI of 1859 are capable of being transferred to another if the transfer follows immediately upon the sale or within a reasonable time thereafter.—22 W R. 29.

21. Where a partition of the jumma was made of a revenue paying mehal under s. 10 Act XI of 1859 in the Collector's books, but no corresponding *butwarra* under s. 11, though there was a private partition,—*Held* that the sale by the Collector passed to an — the share of the defaulter as it was registered in the Collector's books, *i.e.* an undivided share in the entirety.—22 W. R. 450.

22. S. 37 Act XI of 1859 cannot prevent an — from taking possession of a garden planted on the land purchased by him; there being no authority for the contention that, if a zemindar chooses to plant gardens of mango and other trees upon any portion of his estate, he becomes, *quoad* those plantations, his own ryot, and is protected as to the land under s. 37.—23 W. R. 387.

23. The Government having sold its zemindaree rights in certain talooks after a proclamation that the purchaser

AUCTION-PURCHASER (REVENUE SALE) (*continued*).

would be bound to abide by the settlements entered into by it with the dependent talookdars, one of the talooks (a mehal) was purchased with this reservation by M, who then sued without success to eject the proprietor of the said talook. After this M having defaulted in the payments of the Government revenue, the mehal was sold for arrears under Act XI of 1859 and purchased by G. *Held* that G was in a very different position from M (who had purchased the zemindaree rights of Government), and was not bound by the terms of the Government proclamation, but was, as his sale-certificate showed, the purchaser of an entire estate separately recorded on the Collector's rent-roll.—25 W. R. 86.

24. An — is entitled to all the lands situate within his purchased property.—25 W. R. 554.

See Boundary 16.
Churs 77*a*, 82.
Ejectment 6, 52, 75.
Enhancement 4, 41, 74, 136, 202, 207.
Evidence (Estoppel) 80, 76.
Forfeiture 14.
Hindoo Law (Coparcenary) 88.
Junglebooree Tenure 5.
Jurisdiction 62, 175, 446.
Lease 8.
Limitation 77.
Limitation (Act XIII of 1848) 19.
Mortgage 28, 84, 95, 96, 117.
Occupancy 3.
Onus Probandi 22, 53, 55, 165, 205, 218.
Partition 22.
Partition (Butwarra) 1, 8.
Practice (Possession) 4, 5, 62.
Putnee Talook 18, 29, 88, 114.
Resumption 21, 28.
Reversioner 8.
Sale Law 6, 7, 8, 9, 10, 12, 13, 14.
,, (Act I of 1845) 2, 5.
,, (Act XI of 1859) 2, 5, 15, 16.
Shikmee 4.
Special Appeal 37.
Summary Award for Rent 5.
Talook 2.
Under Tenures 6, 7, 12, 13, 14.
Zur-i-peshgee Lease 7.

Autrefois Acquit.

1. A former trial set aside on the ground of want of jurisdiction and illegality, cannot be pleaded as — under s. 55 Act XXV of 1861, it being essential to that plea that the first Court had a competent jurisdiction over the offence.—2 W. R., Cr., 9, 10; 13 W. R., Cr., 42.

2. To render a formal acquittal or conviction a defence on a second trial, the offence must, according to s. 55 Act XXV of 1861, be the same offence. Thus where the prisoner was charged with having forged pottahs A and B bearing the same date and adduced in evidence by him in the same suit, but no mention of any charge as to pottah B was made in the order of commitment, and the prisoner was acquitted on an indictment for forging pottah A, the plea of — was held inadmissible on a subsequent trial of the prisoner for forging pottah B.—7 W. R., Cr., 15. *See also* 22 W. R., Cr., 14.

3. The plea of — was held admissible in the case of a person who was charged with causing hurt after having been acquitted on a charge of using criminal force under s. 352 Penal Code.—16 W. R., Cr., 3.

See Rioting 5, 6.

Ava.

See Practice (Commissions) 20.

Badshapore.

Settlement of the claim set up by Dyce Sombre's representatives to the — estate consequent upon its resumption by the British Government on the death of Begum Sumroo.—(P. C.) 18 W. R. 349.

Bail.

1. A single Judge of the High Court may order the release of a prisoner on — pending the hearing of an appeal.—W. R. Sp., Cr., 18. *See* Practice (Criminal Trials) 6.

2. The words "accused person" in s. 436 Act XXV of 1861 do not apply to a party who has been convicted by the Magistrate under s. 411, and from whose sentence there is no appeal.—10 W. R., Cr., 16. *See* 24 W. R., Cr., 8.

3. Under s. 212 Act XXV of 1861, — can only be demanded where further enquiry is pending and the accused has not been discharged.—10 W. R., Cr., 34.

4. In permitting — to be given by an accused person, a Magistrate has no right to impose conditions so as to throw difficulties in the way of the accused procuring —.—13 W. R., Cr., 1.

5. A Sessions Judge has no power to release on — persons convicted by the Magistrate, pending a reference to the High Court under s. 296 Act X of 1872.—23 W. R., Cr., 40; 24 W. R., Cr., 7, 8.

6. S. 390 Act X of 1872 refers only to the period during which a case is under enquiry, and where the party concerned is still in the position of an accused; but does not empower the Sessions Judge to admit him to — after he is sentenced and acquitted.—24 W. R., Cr., 8.

See Contempt of Court 9.
,, Lawful Authority of Public Servant 5.
Damages 92.
High Court 146.
Recognizance.
Wrongful Restraint 1.

Bailiff.

A Magistrate's order fining a — under 53 Geo. III c. 155 ss. 426 and 105, was upheld, as a Civil Court —, in executing a process against the moveable property of a judgment-debtor, has no authority to use force and break open a door or gate.—7 W. R., Cr., 12.

See Service 3.

Bailment.

The general principles of the law of — are applicable in the Mofussil, and they are substantially the same as those which prevail under English Law.—17 W. R. 90.

See Carrier.
Evidence (Oral) 17.
Jurisdiction 73.
Limitation (Act XIV of 1859) 68.

Bamboos.

See Mischief 3.

Banian.

See Contract 12.

Banker.

1. The Law of Merchants is not applicable to banking transactions in the Mofussil.—13 W. R. 420.

2. A Bank Manager purporting to act under a power of attorney intended to be given in his private capacity, but addressed "Acting Manager of the —— Bank" by B, a constituent of the Bank, cannot divest himself of his character of Bank Manager. If he acts as agent for both parties, he acts to the prejudice of B and to the advantage of the Bank, and there is a breach of duty to B to which the Bank is a party.—(O. J.) 19 W. R. 67.

BANKER (continued).

3. Nor can the Bank Manager, under the above power of attorney, bind B by consenting to any dealings by the Bank, or C who is indebted to it, with goods in the Bank's godowns, which would prejudice B.—*Ib.*

See Bank of Bengal.
Evidence (Documentary) 16.
Hoondee 4, 6.
Limitation (Act XIV of 1859) 828, 828.
Mahajun.
Onus Probandi 266.
Partnership 1.

Bank of Bengal.

1. S. 30 Act IV of 1862 is not intended merely to regulate affairs as amongst shareholders and directors. It is not *ultra vires* for the — to take the security of immoveable property as a protection against loss for a debt already incurred and due.—16 W. R. 203.

2. A written authority to the — by a debtor to sell his immoveable property of which the title-deeds are in deposit, and to apply the proceeds to payment of his liabilities, creates an equitable lien upon the property.—*Ib.*

See Recorders 6.

Barbers.

A suit cannot be maintained to enforce the performance of certain services by —.—1 W. R. 31.

Bareilly.

See Hindoo Law (Adoption) 16.

Barrister.

Where a — renders services which go beyond his profession as a —, his incapacity to recover fees as a —, does not extend to such extra-professional services; and where, as in Burmah, the law enables an advocate to recover fees, and a — acts both as an advocate and in other capacities, the remuneration claimed by him ought to be divided into two parts, and while, in that part of his services in which he acts as attorney, he should be allowed to recover fees not very much in excess of those allowed in Calcutta, no attorney's charges whatever should be allowed for the extra-professional part of his services; the commission or other allowance made for such services being the only proper and a full remuneration for them.—25 W. R. 332.

See Advocate.
Pleader 1.

Bastoo Land.

When land is liable to be assessed with rent as —, and when as *oodbastoo* land.—6 W. R. (Act X) 92.

See Enhancement 49.
Jurisdiction 829, 421, 478, 492.
Occupancy 61.
Relinquishment 28.
Trees 6.

Beerbhoom.

See Ghatwals 1, 15, 26, 29.
Hindoo Law 11, 15.

Behar.

See Onus Probandi 88.
Orchard 1.
Pre-emption 4, 80.

Benamee.

1. Where plaintiff sued to set aside a sale, in execution of a decree, of certain property held by the judgment-debtor, — for plaintiff, it was held that the absence of direct proof of payment of the purchase-money by plaintiff was no ground of objection.—1 Hay 2.

2. S. 260 Act VIII of 1859 does not preclude a person purchasing — from setting up his title against a person not being the certified purchaser or claiming through him.—2 Hay 512 (Marshall 423). *See also* 14 *post.* *See* 8 W. R. 130, 10 W. R. 167, 13 W. R. 85.

2*a*. Plaintiff sued for the recovery of certain property on the allegation that, though the property was purchased by his adoptive mother (A) — in the name of B, she purchased it out of her own separate income so as to make it her property, and that plaintiff, as her heir, was entitled to it on her death. *Held* that the onus was on plaintiff to prove his title; and that even if he proved that A purchased the property with her own money, it did not follow that the purchase was —.—Sev. 150 (*affirmed by P. C.*) 15 W. R., P. C., 7.

3. A conveyance executed between near relations, though registered (the possession remaining with the original owner of the estate), will be regarded as a mere — transaction and in fraud of creditors, unless *bona fides* be proved.—1 W. R. 217, 6 W. R. 310. *See also* 7 W. R. 275, 12 W. R. 236.

4. S. 260 Act VIII refers only to suits between a benameedar and the beneficial owner, and not to cases where a gross fraud has been practised upon a third party.—1 W. R. 328. *See* 8 W. R. 130.

5. Effect of purchase at a — sale where owner and his heir were parties to the fraud.—3 W. R. 10.

6. A — sale of property in execution of a decree will not save it from re-sale in satisfaction of the decree.—3 W. R., Mis., 4.

7. Circular Order of 29 July 1809 was intended to discourage the institution of suits under fictitious names, but is not applicable to a case in which the suit was dismissed on the ground that the property in question belonged to a third party who distinctly repudiated all interest therein.—4 W. R. 102.

8. Parties who permit another to represent himself as the proprietor of their estate and thus induce others to lend money, are not entitled to consideration from a Court of equity and good conscience.—5 W. R. 37.

9. Where the manager of a joint Hindoo family purchases —, the presumption is that the property so purchased is held by him for the benefit of the joint family.—5 W. R. 154.

10. — transactions are a custom of the country, and must be recognised till otherwise ordered by law.—7 W. R. 138. *But see* 10 W. R. 220.

11. Before shutting out a decree-holder who has taken by assignment on the ground that he is a mere — holder from one of the judgment-debtors, it is necessary to be very careful and to ascertain beyond a doubt that the fact is so.—8 W. R. 26.

12. The habit of holding land —, though inveterate in India, does not justify the Courts in making every presumption against apparent ownership.—(P. C.) 8 W. R., P. C., 3.

13. A suit to recover property purchased by a vakeel from a client — for another, and never made over to the ostensible purchaser, cannot be maintained in the name of such ostensible purchaser.—10 W. R. 469. *See also* 19 W. R. 434.

14. A purchaser of immoveable property sold in execution of a decree, having obtained a certificate under s. 259 Act VIII, and having instituted a suit to recover possession of the property purchased by ejecting the person who was in possession,—*Held* that the latter (the defendant in the suit), unless he was in possession under circumstances which amounted to a transfer to him of the title which the plaintiff derived from the purchase, was debarred not simply by s. 260, but by the general provisions of the Act, from pleading that although plaintiff was the certified purchaser, he did not purchase on his own behalf, but on behalf of defendant.—(F. B.) 11 W. R., F. B., 16. *See* 14 W. R. 111, 179. The same ruling applied to a case under s. 21 Act I of 1845.—14 W. R. 10. *See contra* 14 W. R. 372. The above F. B. ruling was reversed by the P. C.—18 W. R. 157.

BENAMEE (*continued*).

15. Where the property of one family is conveyed to another by a deed securing the profits to the former, the possession is on behalf of the former till by some unequivocal act they show an intention to hold on their own behalf.—12 W. R. 117.

16. To what cases the criterion in — transactions to see whence the money came is applicable.—12 W. R. 121.

17. In a suit between Mahomedans in the nature of an ejectment suit in which C (the plaintiff) sought to recover a share of property in the possession of D on the ground that the purchase was made in the joint names of C's father and D's wife, and in which D alleged that he himself was beneficial owner of the property, having purchased it — in the names of his wife and son, it was held that the real criterion was to consider from what source the purchase-money came. The presumption is that a purchase made with the money of A in the name of B is for the benefit of A; and it cannot be presumed from the purchase by a father, whether Mahomedan or Hindoo, in the name of his son, that there was an advancement in favor of that son. —(P. C.) 13 W. R., P. C., 1.

As to the criterion.—15 W. R. 12.

17*a*. If a Hindoo purchase property in the name of his son, the property is not vested in the son but remains vested in the father who purchased.—(P. C.) 4 W. R., P. C., 46 (P. C. R. 378).

So with regard to an idol.—(P. C.) 20 W. R. 95. The presumption is that it was a — purchase by the father, on whose death it becomes the property of the family.—20 W. R. 269.

18. The law as to — conveyances taken by a father in the name of a son, whether in Hindoo or Mahomedan families, should be considered in all Courts in India as conclusively settled by the above decision in 4 W. R., P. C.—(P. C.) 14 W. R., P. C., 14. *See also* 16 W. R. 186.

19. That ruling, however, was not applied to a case where a father who had purchased property with his own funds, had had the conveyance drawn up in his son's name with a view to affect the interests of his daughters and to vary the rule of succession between sons and daughters in his family.—(P. C.) *Ib.*

20. In the case of a — purchase, the mere use of the *furzee* name is sufficiently disposed of if the party whose name is used sets up no claim, and if there appears to have been long-continued possession on the part of the person claiming to be the beneficial owner.—14 W. R. 58.

21. Where property is acquired by a Mahomedan lady in wedlock and also by the daughter of such parents, very little evidence will suffice to dispose of the presumption of a — purchase, from the fact of the title-deeds being with the lady.—14 W. R. 366.

22. In cases of — transactions, it is not a principle of law that the issue to be framed is, from what source the purchase-money comes, though that is an excellent criterion for determining the character of the purchase.—14 W. R. 372.

22*a*. Ss. 20 and 21 Act I of 1845 were not considered to raise a presumption of law fatal to the case of — purchase set up by the appellant.—(P. C.) 14 W. R., P. C., 7. *See also* 19 W. R. 223.

23. In a suit for arrears of rent on the basis of a kubooleut which defendant contended was —,—*Held* that the Judge should have tried the question whether the lessor's title was —, and not have entangled the question by the technical doctrine of estoppel.—16 W. R. 186.

24. Where the ostensible lessees stood in the position of wives to the beneficial lessees and were found not to have paid the consideration money, the lease was held to be —; and when the tenure passed away by an execution sale to a third party, the lessor was entitled in equity to claim the rent from the beneficial lessees.—18 W. R. 132.

25. — purchases in India, not having been declared by law to be illegal, must be recognised and have effect given to them by the Courts except so far as positive enactment forbids. There is nothing in s. 260 Act VIII, either taken by itself or taken in connection with s. 259 and ss. 261 to 266, to prohibit — transactions.—(P. C.) 18 W. R. 157.

Or that provides that a person who is not the actual purchaser can succeed in a suit to recover a property from the holder merely on the allegation of being the certified purchaser.—24 W. R. 278. *See also* 25 W. R. 498.

26. It is a principle of natural equity, which must be universally applicable, that where one man allows another to hold himself out as the owner of an estate, and a third person purchases it for value from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold himself out shall not be permitted to recover upon his secret title, unless he can overthrow that of the purchaser by showing either that he had direct notice, or something which amounts to constructive notice, of the real title, or that there existed circumstances which ought to have put him upon enquiry.—(P. C.) 18 W. R. 166. *See also* 25 W. R. 532.

27. S. 260 Act VIII was designed to check the practice of making — purchases at execution sales, but cannot be taken to affect the rights of members of a joint Hindoo family, who, by the operation of law, are entitled to treat as part of their common property an acquisition, howsoever made, by a member in his sole name, if made by the use of the family funds.—(P. C.) 19 W. R. 356.

28. To make out a title to property, it is not sufficient that the party for whom, or in whose name, the claimant alleges that he bought the property, does not come forward to dispute the allegation, but it is necessary for plaintiff to establish either the alleged — or a subsequent conveyance from the alleged benameedar.—21 W. R. 19.

29. If it is once established that a transaction is —, the mere fact that the deeds and proceedings involved bear the benameedar's name cannot affect the question as to who is the principal.—21 W. R. 257.

30. All the covenants made by a benameedar in the sale of a property are not necessarily binding upon the true owners; though there may be circumstances under which a person whose name does not appear upon a contract may be liable to perform its conditions.—21 W. R. 398. *See* (P. C.) 26 W. R. 32.

31. If a purchaser, although he may be a purchaser for value, has actual or constructive notice of a trust, he is bound by it to the same extent and in the same manner as the person from whom he purchases; and when there is a person in possession of an estate other than the nominal owner (*i.e.* the person in whose name the title-deed is), the purchaser is bound to enquire what is the nature of his possession; otherwise he takes subject to the rights of the person in possession.—22 W. R. 8, 189.

32. Notwithstanding s. 260 Act VIII, it is open to a party, other than the holder of the sale-certificate, to show that at the sale itself the purchase was made on his behalf. 22 W. R. 270.

33. In a suit for possession brought by the holder of a certificate of purchase of property sold at an execution sale, it is open to the real owner, if in possession (s. 260 Act VIII notwithstanding), to show that plaintiff is the apparent owner (benameedar) only and a mere trustee.—(P. C.) 23 W. R. 358.

34. A bill of sale may be collusive (*i.e.* —) and may still pass away the property from the party executing it.—24 W. R. 138.

35. Where property was sold nominally by benameedars but in reality by the real owner, and the consideration was the debts due from him to the vendee, the sale was held to be perfectly legal as against the real owner, and therefore as against creditors seeking to execute their decree against him after such sale.—24 W. R. 253.

36. Where a *kubala* was entered into with the plaintiff by a Hindoo widow as vendor and was perfectly consistent with her being *benameedar*, and perfectly consistent with the allegations in the plaint that her sons caused her to enter into it on their behalf, they being the real owners, the real vendors, and the persons who actually received the purchase-money, which in a given event was to be returned, —*Held* upon the plaint and the allegations found in it, that the plaintiff had disclosed what might be a cause of action against the sons as well as the mother, and was entitled to an adjudication of the question, whether the contract was really entered into by the mother as the agent and on behalf of the sons and by their authority, or whether the plaintiff, knowing the facts, had elected to treat the mother as the sole contracting party.—(P. C.) 26 W. R. 32.

See **Abatement 1.**
Advancement 1.
Appeal 15.

Benamee (*continued*).

See Auction Purchaser (Execution Sale) 18.
Auction Purchaser (Revenue Sale) 10.
Bond 28.
Certificate 97.
Conveyance (Transfer and Assignment) 11.
Cross Decrees 11.
Debtor and Creditor 8.
Declaratory Decree 18.
Endowment 89*a*.
Evidence (Estoppel) 7, 30, 52, 92, 105, 121, 124.
,, (Oral) 22, 45.
Fraud 4, 6, 9, 10, 18, 19.
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High Court 96.
Hindoo Law (Coparcenary) 88.
Husband and Wife 12, 18, 36, 37, 42.
Intervenor 68.
Jurisdiction 5, 270, 275, 374, 511.
Limitation (Act XIV of 1859) 98, 281, 288, 271.
Mortgage 29, 88, 91, 108, 158, 195, 219, 259.
Onus Probandi 15, 66, 70, 188, 268, 279.
Practice (Execution of Decree) 58, 59, 94, 259.
,, (Parties) 25, 26.
,, (Possession) 6, 31, 41, 48, 57.
Principal and Surety 19.
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Res Judicata 4.
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Sale 157.
,, Law 11, 18.
,, ,, (Act XI of 1859) 15.
Secret Trust.
Special Appeal 187.
Vendor and Purchaser 6, 7*c*, 13*a*, 14*a*, 33, 47, 58, 60, 61.

Bench of Magistrates.

1. Jurisdiction of a — how to be determined.—21 W. R. Cr., 45.

2. Where a — has before it materials sufficient in law to support a conviction, the High Court has no authority to disturb it.—21 W. R., Cr., 57.

3. A — has no jurisdiction to try a prisoner for an offence under s. 457 Penal Code.—23 W. R., Cr., 6.

See Security 28.
Summary Trial 6.

Berhampore.

See Gambling 2.

Bhagdaree.

See Occupancy 50.

Bhaolee.

See Enhancement 160.
Jurisdiction 284, 317.
Limitation 201.
Occupancy 82.
Orchard 1.
Rent 66, 72, 75, 96, 98, 105, 108, 111, 112.

Bhaugulpore.

See Hindoo Law 1.
Pre-emption 4, 80.

Bheel.

See Water 2, 3.

Bhoomear Tenure.

Bhoomears are bound to render certain customary services, but their lands are not resumable.—6 W. R. 137.

Bhoonye.

Where a party holding lands from Government under a settlement at a fixed rent, is appointed — with a remuneration recoverable by deduction from the rent, such appointment creates no *jagheerdaree* right, but the reservation of rent, even though small, indicates that the tenancy remains, giving no right of exclusive occupancy.—17 W. R. 410.

Bhootan.

See Declaratory Decree 25.

Bhownuggur.

See Jurisdiction 514.

Bigamy.

See Marriage 17.

Bigh-Brito Tenure.

Where a defendant fails to establish his plea of —, he cannot set up another title derived by a 12 years' occupancy under s. 6 Act X of 1859.—W. R. Sp. 187.

Bill of Exchange.

1. The *Lex Mercatoria*, although adopted as part of the Common Law of England, is not part of the law by which transactions are governed in those parts of India into which the Common Law of England has not been introduced. Even in England where the *Lex Mercatoria* prevails, the notarial protest is not necessary except in the case of a foreign —.—Sev. 619.

2. A payee for honor, though entitled to the same remedies upon the bill as the party for whom payment was made, is not entitled to bring a suit in his own name and on his own behalf for the value of the goods for which the bill was drawn.—1 Hyde 274.

3. When the analogy between native Hoondees and English — is complete, the English law is to be applied.—2 Hyde 259.

4. Even though the English law regarding — is not applicable to transactions in which one of the parties is a native of India, the holder of a — is bound to give the maker notice of dishonor in reasonable time.—1 W. R. 75.

5. A decree obtained against the acceptor of a — by the drawer, but not satisfied, will not exonerate the drawer.—1 W. R. 95. *See* 17 W. R. 442.

6. The drawer of a — [illegible] shown on the face of the — that he drew it as agent.—2 W. R. 301. *But see* 17 W. R. 442.

7. Nor can he plead discharge by acceptor and want of notice of dishonor, when the goods, on the faith of which the — was accepted, were attached and sold with the drawer's consent in payment of his debt to a third party.—*Ib.*

See Hoondee.
Limitation (Act XIV of 1859) 264.
Partnership 18.
Receipt 4.

Bill of Lading.

1. One of the defendant's flats, while carrying hides belonging to the plaintiff, struck upon a projection em-

Bill of Lading (*continued*).

bedded in the river, and was lost. The — contained the following exceptions, viz., "difficulties or casualties of navigation, and all and every danger and accident of the river and navigation whatsoever." The action being instituted to recover the value of the hides, it was held (1) that the casualty fell within the words of exception, and (2) that, considering the enormous risks incurred in the navigation of the river, the words were not unreasonably large. —1 Hyde 283.

2. The refusal of a master of a ship to sign a — otherwise than with an endorsement as to the demurrage claimed, is a wrong that may be fully compensated for in damages.—3 W. R., R. C., 1.

3. Damage from leakage of boiler to goods shipped by steamer is within the exceptions in the —.—8 W. R. 35.

4. *Quære.*—Whether, notwithstanding the exceptions in the — defendants may not be made liable on the implied warranty.—*Ib.*

5. The provision in the — (for goods shipped from Calcutta to Rangoon) that any claim for short delivery or damage to goods should be made in Calcutta and not elsewhere, does not affect plaintiff's right of suit in the Court at Rangoon. Objection on this ground cannot be taken for the first time at hearing of appeal.—*Ib.*

6. The same provision was held to operate so as to make the preferring of a claim for short delivery under the — a condition precedent to a suit in the Court at Rangoon.—9 W. R. 396.

7. When a shipmaster undertakes that goods shipped by him shall be delivered, subject to the exceptions and conditions mentioned in a —, in good order and condition, he takes upon himself the consequences and contingencies other than the exceptions expressed in the — or which are implied by law.—(O. J.) 22 W. R. 39.

See Freight 2.
Negligence 2.

Bill of Sale.

See Deed of Sale.

Blind.

See Hindoo Law (Inheritance and Succession) 75, 76, 108.

Boat.

See Jurisdiction 480.
Special Appeal 139.
Splitting Cause of Action 18.
Theft 7, 13.

Boistom.

See Hindoo Law (Inheritance and Succession) 23.

Bonâ Fides.

See Adjustment 2.
Advancement 1.
Assignment 3, 9.
Attorney and Client 3.
Auction Purchaser (Execution Sale) 21*a*, 35.
Benamee 3.
Building 6.
Compromise 14.
Construction 22*a*.
Contract 7, 12.
Contribution 17.
Conveyance (Transfer and Assignment) 6, 8.
Criminal Trespass 6.
Damages 38, 87.
Debtor and Creditor 1.
Declaratory Decree 16.
See Deed 7.
Defamation 2, 4, 7, 8.
Ejectment 24, 43.
Endowment 20.
Enhancement 74.
Evidence (Admissions and Statements) 6, 18.
,, (Documentary) 21.
,, (Estoppel) 30, 125.
Gift 25, 28.
Guardian 17.
High Court 29.
Hindoo Law (Coparcenary) 28, 58.
,, ,, (Sale) 6, 8.
,, Widow 23, 67, 69.
Husband and Wife 9, 25, 36, 46.
Immoveable Property 2.
Insolvency 16.
Intervenor 11, 24, 45, 62.
Jurisdiction 467.
Jury 38.
Lease 29.
Limitation 11, 182.
,, (Act XIV of 1859) 46, 60, 100, 101, 103, 116, 137*a*, 141, 150, 182, 205, 210, 224, 230, 258, 269, 275*a*, 277, 281*a*, 287, 297, 299, 313, 316.
,, (Act IX of 1871) 2, 7.
,, (Execution of Decree) 7, 13.
,, (Reg. III of 1793 s. 14) 5.
Mahomedan Law 20.
Mesne Profits 31, 43.
Minor 11.
Money Decree 2, 3.
Mortgage 104, 110, 115, 123, 150, 167, 168, 213, 238, 279, 284.
Municipal 8, 11, 21.
Onus Probandi 15, 29, 70, 139, 141, 153, 159, 172, 178, 185, 221, 226, 259, 261, 272.
Partition (Butwarra) 30.
Partnership 19.
Police 5.
Possession 8.
Practice (Attachment) 3.
,, (Execution of Decree) 47, 51, 110, 185.
,, (Possession) 57.
Pre-emption 12.
Principal and Agent 3.
Purchase-money 1*a*, 2.
Putnee Talook 15, 66, 78, 106.
Receiver 6.
Registration 12, 22, 53, 106.
Rent 39.
Res Judicata 34.
Sale 1, 8, 9, 22, 48, 76, 100, 156, 157, 184, 213, 223, 238.
Sale Law 6.
,, ,, (Act XI of 1859) 3.
Special Appeal 87.
Summary Award for Rent 1*a*.
Summary Trial 9.
Theft 5.
Trust 3, 4.
Vendor and Purchaser 7*b*, 7*c*, 10, 13*a*, 14*a*, 14*c*, 16, 19, 29, 31, 42, 44, 47, 53, 56, 63, 76.
Will 29, 37.

Bond.

1. Where the vendor of certain land was jointly interested with others in the land, and being unable to give the purchaser possession or to return the purchase-money, in his own character, and not as agent for any parties, gave him bonds for the amount, it was held that the vendor alone was liable upon the bonds and that his co-parceners could not be joined as defendants.—1 Hay 30 (Marshall 9).

3. Plaintiffs having long ago thrown up their lien by conditional sale on a mouzah and sought to recover the money due on their bond in the ordinary way, could only recover it through the person or the property of their debtors.—1 Hay 466.

4. A decree on a — can be passed upon the testimony of a single witness, whether with reference to s. 15 Reg. III of 1792, or s. 28 Act II of 1855.—2 Hay 74.

5. All payments on account of — debts are first to be credited to interest, and s. 6 Reg. XV of 1793 distinctly provides for the accumulated interest not being awarded in excess of the principal.—Sev. 834*a*. *But see* 5 W. R. 51.

6. A suit will lie on a — given for the purpose of securing money to be expended in carrying on law proceedings.—W. R. Sp. 63.

7. Though a — may be genuine and duly executed, the receipt of consideration must nevertheless be proved.—W. R. Sp. 197.

8. Where the holder of a — from the former proprietor of an indigo factory has made no demand on it for twelve years, or apprised the assignees of its existence as a debt due by the factory, he cannot come down on the present proprietors but must look to the obligor of the — personally for satisfaction.—W. R. Sp. 266 (L. R. 44).

9. In a suit upon a —, plaintiff may claim interest from the time defendant declined payment of the sum due.—W. R. Sp. 291 (L. R. 75).

10. Interest on — debts is not to be limited to a sum not exceeding the amount of the —.—W. R. Sp. 349 (L. R. 125), 2 W. R., S. C. C., 1 (S. C. C. 110), 11 W. R. 68.

11. A *tumasook* or —, in modification of a lease, supersedes the kuboolcut, and is an answer (and not merely a set-off) so far as it goes to a claim for rent.—W. R. Sp. (Act X) 119 (3 R. J. P. J. 109).

12. A bond executed by a widow in possession of a zemindaree was held binding on the adopted son of the late zemindar, the — having been given for debts which the adopted son had admitted his liability to pay.—(P. C.) 4 W. R., P. C., 71 (P. C. R. 437).

13. The act of one of two holders of a — cannot destroy the lien of the other on property pledged to both as security for a joint-debt.—3 W. R. 130.

14. An obligee who has under his — a separate lien on each and all of several mouzahs pledged as security, may elect for sale whichever is likely to satisfy his claim.—8 W. R. 379.

15. There is nothing to prevent the obligee from purchasing any property so sold by him.—*Ib.*

16. Money lent on a — of the "malik and mookhtar" of an indigo factory on his personal credit and the security of the entire factory, cannot be recovered from other parties found to have a share in the factory.—9 W. R. 355.

16*a*. Defendant having denied in a Criminal Court the execution of a —, plaintiff sued him for the amount payable under the — before the time specified therein for payment had arrived. *Held* that the suit could not be maintained.—10 W. R. 351.

But where an obligor fraudulently withheld delivery of a — which had been executed, within a reasonable time after receipt of the money,—*Held* that the obligee had a right to sue for the return of the money before the time fixed for payment.—21 W. R. 443.

17. Two persons who had advanced different sums to defendant, who gave them jointly a — for the entire sum borrowed, may sue jointly for the amount specified in the —, notwithstanding that they have separate interests in the money to be recovered.—11 W. R. 455.

18. Where a borrower of money under a — pledges not only his own share of an estate but also the shares of minor co-sharers, he alone is liable to be sued for the rent which the lender was obliged to pay on account of the shares of the minors.—15 W. R. 37.

19. What a person is bound to show if he wishes to charge Mahomedan ladies under a — executed in their absence by another under a Mookhtarnameh.—18 W. R. 257.

20. Where, in a suit on a —, defendant answers that the amount should be satisfied out of the purchase-money of property sold to plaintiff who claims to avoid the sale as bad,—*Held* that the Lower Courts were bound to try the question in this suit, and ought not to have left plaintiff to bring a new suit to try the question as to the validity of the sale.—18 W. R. 394.

21. Money lent on a mortgage — is recoverable notwithstanding there is no express condition in the — to that effect, in the event of dispossession by a third party. But where the money was borrowed by defendant's husband on behalf of the family with the tacit consent of the other members of the family, plaintiff was held entitled to recover only defendant's share of the debt.—20 W. R. 484.

22. In a suit on a — where defendant pleaded satisfaction,—*Held*, under s. 114 Act I of 1872, that as the — was in the hands of the obligor, who was not shown to have stolen it, it was rightly presumed that the obligation had been discharged.—22 W. R. 265.

23. A suit on a — cannot be maintained where defendant pleads that the —, though executed in the name of plaintiff, was really executed in favor of a third party, if it is found that plaintiff is not the real holder of the —.—23 W. R. 446.

24. The fact that the money raised on a — is used to pay a debt due by a third party does not make such third party liable to the party who executed the —, unless the latter joined in the — at the request of the third party or of some one acting under his authority.—24 W. R. 99.

25. In the absence of satisfactory proof of fraud or mistake, every presumption ought to be made in favor of statements contained in a — which was deliberately entered into and which has been acted upon for many years.—(P. C.) 25 W. R. 84.

26. Upon a joint — by five (where the contract is between Hindoos out of Calcutta), there is nothing in the law of this country, independently of Act IX of 1872, to prevent the obligor from asking for a decree against three out of the five for their share of the debt.—25 W. R. 419.

See Attorney and Client 3.
Auction Purchaser (Execution Sale) 3, 41.
Bottomry Bond.
Cause of Action 15, 19.
Certificate 28.
Contribution 24, 25, 26.
Debtor and Creditor 6.
Declaratory Decree 17.
Endowment 50.
Evidence 56.
,, (Documentary) 76.
,, (Estoppel) 61, 68.
Guardian 30.
Heir 3.
Husband and Wife 31, 37.
Instalments 2, 3, 4, 5, 7, 8, 9, 10.
Interest 7, 11, 12, 64, 66, 69, 80, 88, 90, 95, 103, 115, 116.
Joinder of Causes of Action 18, 21.
Jurisdiction 35, 47, 207, 265, 326, 342, 424, 507, 512.
Lien 1, 4.
Limitation (Act XIV of 1859) 3, 5, 121, 181, 194, 331.
,, (Act IX of 1871) 34.
Mesne Profits 5.
Money Decree 2, 9*a*.
Mortgage 9, 33, 44, 70, 196, 218, 230.
Onus Probandi 12, 23, 98, 188.
Partnership 26.
Payment 6, 9.

BOND (*continued*).

See Practice (Appeal) 45.
„ (Execution of Decree) 6*a*, 35, 64, 169, 170.
„ (Suit) 82.
Principal and Surety 25, 26.
Registration 6, 44, 45, 50, 67, 76, 86, 101, 102, 103, 109, 113, 114, 125.
Representative 5.
Res Judicata 29, 56.
Right to sue 9, 18.
Sale 15.
Security 22, 27.
Set-off 1, 10.
Small Cause Court 15.
Special Appeal 101, 107.
Stamp Duty 43, 72, 79.
Trust 7.
Vendor and Purchaser 49.
Zemindar 1, 2.

Borrower.

See Loan.

Bottomry Bond.

1. A suit will not lie on an ordinary — given by the master of a vessel against the owner to recover the amount thereof.—24 W. R. 50.

2. Such a suit cannot be brought in the Court of the town of Moulmein, which has no admiralty jurisdiction, against the owner personally; and the vessel cannot be declared to be primarily liable, or be sold to satisfy the amount of the bond.—*Ib.*

Bought and Sold Notes.

See Contract 34, 35, 36.

Boundary.

1. In a suit relative to a disputed — of which defendant holds possession under an Act IV, award declaring that he is to be maintained in possession until otherwise decided by the Civil Court, it is incumbent on plaintiff to give very full and satisfactory proof of his title.—1 Hay 7. *See also* 13 W. R., P. C., 7.

2. In a — dispute a local investigation is absolutely necessary.—Sev. 334. *But see* 17 W. R. 472.

3. A second suit will not lie to fix the — of a village decreed to plaintiff in a former suit.—Sev. 451.

4. A decision in a — suit decides only the question of right to possession, not that of right to hold the land rent-free.—W. R. Sp. 60.

5. In a — dispute, oral evidence is quite sufficient to establish either the fact of possession or of title.—W. R. Sp. 135. *See also* 9 W. R. 125.

6. In a — dispute, the title of plaintiff is not ordinarily open to attack. But where plaintiff sues for property in defendant's hands on the ground of superior title, defendant has a right to call plaintiff's title in question.—W. R. Sp. 355 (L. R. 129).

7. Zemindars have no authority to alter the boundaries of their permanently settled estates. Such an arrangement has no binding effect on others.—*Ib.*

8. A — dispute regarding the settlement of pergunnah Havelee.—(P. C.) 3 W. R., P. C., 19 (P. C. R. 578), 25 W. R. 157. *See* 13 W. R., P. C., 7.

9. A — dispute not cognizable in a Revenue Court.—1 W. R. 36 (3 R. J. P. J. 156).

10. The acceptance by defendants in a former suit of a map as correct is legal, though not conclusive, evidence against them in a — suit.—8 W. R. 291.

11. Where there was a confusion as to the boundaries of three separate talooks, it was decreed that they should be so fixed that the produce of the land in each should bear the same proportion to the jumma payable thereon as the produce of the whole of the said lands bears to the total of the jummas payable on account of the three talooks.—9 W. R. 94.

12. Chittahs when evidence of title in — disputes.—(P. C.) 11 W R., P. C., 4. *See also* 11 W. R. 351, 24 W. R. 410.

13. In a case of — dispute, a survey map, if not conclusive evidence, is evidence of an important character.—15 W. R. 3. *See also* 15 W. R. 35, 444; 20 W. R. 248.

14. Where a decree directed that plaintiff should obtain possession of land according to the boundaries given in the plaint, and also specified the quantities of land of which he was to obtain possession, and it turned out that those quantities were not strictly accurate,—*Held* that the decree should be interpreted as if it were a conveyance of land stating the boundaries and then saying that it contains so many acres; and that the plaintiff was entitled to all the land contained within the specified boundaries, the mistake as to quantities being merely a misdescription.—(P. C.) 16 W. R., P. C., 5. *See also* 18 W. R. 25, 20 W. R. 224.

15. An award of the Collector, under Act I of 1847, in respect of boundaries, is not final, even though undisturbed on appeal; nor is he competent to do more than demarcate by visible and tangible marks the boundaries between estates and fields.—16 W. R. 109.

16. Plaintiff and defendant, proprietors of two adjoining but unascertained parcels of land, being in one sense purchasers from the same vendor, although as a matter of fact the sales under which they acquired their titles were effected by the Collector, the Court, upon the special facts of the case, held plaintiff entitled to treat defendant as his vendor and to demand as against him an adjudication of a line of —, and ordered the Collector to make a *butwarra* accordingly.—17 W. R. 26.

17. Great weight should be given to reports of Deputy Collectors upon local investigations in dealing with — questions.—(P. C.) 17 W. R. 285.

18. Where a Court finds it difficult to execute a decree passed some years ago declaring plaintiff entitled to erect — pillars according to a certain *Khusreh*, it may take into consideration other decrees between the same parties in explanation of the *Khusreh*.—17 W. R. 379.

19. Where the Privy Council gave the preference to a *thakbust* proceeding over the report of an Ameen, according to the *ratio decidendi* that, where the results of two local investigations are conflicting, the earlier was to be preferred, upon the principle that, in the interval between the two investigations, the features of the locality might have changed, and evidence of possession might have been lost. —(P. C.) 19 W. R. 361.

20. A proprietor of land has no right to bring a suit to compel his neighbours to agree to a particular line of — being marked out between his lands and theirs, when he does not venture to say that they have by any overt act transgressed that —.—22 W. R. 134.

21. The decision in a former suit as to the — line between two villages is conclusive only as to the land then in dispute, but not as regards the — line itself.—25 W. R. 393.

See Auction Purchaser (Revenue Sale) 9.
Declaratory Decree 12*a*, 41.
Decree 17, 21, 29.
Dismissal of Suit or Appeal 24.
Indigo 8.
Julkur 9.
Jurisdiction 82, 88, 120.
Khas Mehals.
Lakheraj 23.
Land 2.
„ Dispute 16.
Lease 34.
Limitation 23.
Non-suit 2.
Onus Probandi 52, 128, 146, 233.
Partition (Butwarra) 14, 35.
Plaint 41, 42.

BOUNDARY (*continued*).

See **Pottah 27.**
Practice (Execution of Decree) 208.
„ (Possession) 19, 60, 65, 95.
Privy Council 69.
Punchayet 1.
Putnee Talook 8.
Title 10, 15.
Waste Land 8.

Brahmin.

Koolin Brahmin. *See* Marriage 14.

See Escheat 1.

Breach of Contract.

1. Suit may be brought before 20th October for — to sow indigo on or before that date.—S. C. C. 24.

2. Breaches of contract in two different years are different causes of action.—*Ib.* 80.

3. Where a landlord holds two kubooleuts, one of which entitles him to damages for non-cultivation of indigo, and the other enables him to cancel the lease, he cannot for the same breach recover damages in one suit, and make void the lease in another.—*Ib.* 87.

4. A course of conduct by one of the parties at variance with the terms to which they had agreed, would entitle the other to put an end to the agreement, and stand upon the rights which he had independently of that document.—Sev. 11.

5. Where the parties to a contract assess by agreement the amount of damages payable in case of a —, it is the duty of the Court to enforce the terms of the contract.—W. R. Sp. 354.

6. When the refusal to perform a contract can be proved by evidence which shows that a party has utterly renounced the contract or has put it out of his own power to perform it, the injured party may at his option sue at once, or wait till the time when the act was to be done. The *onus probandi* in such a case is on the plaintiff.—3 W. R. (S. C. C.) 14 (S. C. C. 148).

7. Case in which the majority of the Court held it to be one of — and not cheating.—4 W. R., Cr., 13.

8. In a suit for — (in this case an indigo contract) to be performed at different times, limitation will count from each —, and separate damages may be recovered for each —.—(F. B.) 6 W. R. (Act X) 61. *See also* 6 W. R. 278.

9. In a question of — between parties, a Collector cannot, on consideration of equity, substitute other terms than those agreed upon.—7 W. R. 132.

10. A plaintiff entitled to damages for — is not also entitled to specific performance, or to an injunction against further —.—7 W. R. 303.

11. In a suit for — defendant may plead that plaintiff being first to break the contract cannot now sue.—*Ib.*

12. Coolies in Assam, who have received advances in contemplation of work to be done, may be proceeded against under Act XIII of 1859.—8 W. R., Cr., 6.

13. Act XIII of 1859 relates to fraudulent —, and does not apply where an advance has not only been worked off by a laborer, but an actual balance is due to him.—8 W. R., Cr., 69. Nor does it apply to — by domestic servants.—12 W. R., Cr., 26.

14. S. 490 Penal Code does not apply to a contract to place defendant's carts at complainant's disposal for a specified time to convey an article from where he pleases to where he pleases.—9 W. R., Cr., 12.

15. *Quære.* Whether the words "during a voyage or journey" do not limit that section to offenses against travellers.—*Ib.*

16. A party failing to perform his contract may be sued, at the pleasure of the other party, either for specific performance or for damages.—12 W. R. 149.

17. A laborer who has received an advance on account of work to be done for four months in a year for a period of three years, may be proceeded against for — under Act XIII of 1859.—14 W. R., Cr., 29. *But see* 18 W. R., Cr., 53.

18. Where a pottah and kubooleut exist between two parties, and the only reason why the pottah is not operative is that the lessee does not deliver it, he cannot be allowed to take advantage of his own — and recover *khas* possession.—18 W. R. 437.

19. A — by one of the parties is a ground for an action for damages or for specific performance, but not a ground for setting aside the contract, or declaring it null and void. —(P. C.) 19 W. R. 133.

20. Where defendants agreed to retain personal possession of certain property and not to alienate, but to give plaintiffs the refusal whenever defendants had occasion to sell it, a lease of the property to others was held to be a — by defendants, and plaintiffs were declared entitled to a conveyance of the property.—24 W. R. 214, 25 W. R. 378.

See **Adjustment 10.**
Breach of Contract of Service.
Contract 5, 6, 8, 9, 22, 34, 41, 48.
Contractor 4.
Damages 2, 3, 11, 12, 20, 22, 31, 45, 52, 59, 61, 64, 71, 93, 107, 108, 111.
Ejectment 51, 66, 68.
Heir 11.
Husband and Wife 30, 31.
Indigo 2, 11, 12, 17.
Interest 102, 114.
Joint Stock Company 5.
Jurisdiction 168, 222, 276, 437, 496.
Kubooleut 64.
Lease 32, 63, 66, 68, 69.
Limitation 5, 156, 198.
„ (Act XIV of 1859) 7, 75, 104, 105, 118, 143, 146, 189, 202, 219, 244, 249, 278, 301, 308.
Marriage 28, 39.
Non-suit 1.
Putnee Talook 41, 64.
Re-entry 5.
Registration 129.
Small Cause Court 12, 17.
Special Appeal 27, 48, 91.
Specific Performance 7, 8.
Stamp Duty 20.
Vendor and Purchaser 9, 16, 54, 66, 67.

Breach of Contract of Service.

— by a wet-nurse.—12 W. R., Cr., 25.

See **Barbers.**
Breach of Contract 13, 17.

Breach of the Peace.

1. To constitute a proper foundation for an order under s. 491 Act X of 1872, the Magistrate should adjudicate upon legal evidence that the person charged is likely to commit a —, and after notice to such person of the particular conduct on his part complained of; where the ground of complaint to which such particular conduct had reference is found to be unfounded, the Magistrate cannot adjudicate upon an entirely different ground.—21 W. R., Cr., 83. *See also* 22 W. R., Cr., 79 (*two cases*); 25 W. R., Cr., 15. The notice to the accused should give him sufficient time to come in to produce his witnesses.—22 W. R., Cr., 18. *See* 23 W. R., Cr., 9.

2. S. 33 Act I of 1872 does not justify a Magistrate, when proceeding under s. 491 Act X of 1872, in using evidence taken in a previous criminal trial in supersession of evidence given in the presence of the accused.—22 W. R., Cr., 36.

3. S. 491, and not s. 489, Act X of 1872, is applicable to cases where there is only a possible apprehension of future —.—24 W. R., Cr., 10.

See **Jurisdiction 497.**

BREACH OF THE PEACE *(continued).*

See Land Dispute.
Recognizance 2, 3, 4, 5, 6, 7, 8, 13, 14, 17, 18, 19, 21, 22.
Right of Way 4.
Security 17, 18, 20, 23, 24, 25, 26, 27.

Breach of Trust.

See Act XIII of 1850.
Criminal Breach of Trust.
Deed 10.
Husband and Wife 1.
Pleader 14.
Trust 1, 2, 13.

Bribery.

See Illegal Gratification.

Bridge.

See Declaratory Decree 33.

British Subject.

1. The law allows a person the right to cease to be a Hindoo or Mahomedan in the fullest sense of the word, and to become a Christian, and to claim for himself and his descendants all the rights and obligations of a — .—2 Hyde 3.

2. Procedure by Magistrate when a person whom he has reason to suppose is a European — is brought before him. —5 W. R., Cr., 53.

3. Whether or not an accused is a European — is a matter of fact to be determined judicially by the Court of Session on the evidence, in the event of the prisoner raising that question.—10 W. R., Cr., 6.

See Advancement 1.
Domicile 1.
High Court 21.
Jurisdiction 381, 498.
Legitimacy 9.
Minor 17.
State Offences 1.
Will 21.

Broker.

1. A — is sometimes agent of both parties. Primarily he is agent of the party originally employing him. He becomes agent of the other party when the contract is definitely settled as to its terms between the principals.—1 Hyde 51.

2. Where plantiff, a —, agreed to give up an admitted claim to brokerage on 2,000 corahs previously disposed of in consideration of defendant (a commission agent) employing him to sell a like quantity of corahs and all his other goods for the future, employing plantiff alone as his — ; and it was also agreed that, if defendant did not sell the second batch of corahs through plaintiff, the brokerage on the whole would be payable by defendant,—*Held* that the agreement was not void either as being in restraint of trade under s. 27 Act IX of 1872, or for uncertainty under s. 29.—(O. J.) 23 W. R. 146.

Brother.

See Ancestral Property 18.
Brother's Daughter.
,, Daughter's Son.
,, Grandson.
,, Son.
See Brother's Son's Daughter's Son.
,, Son's Son's Son.
Certificate 25, 89, 108.
Half-brother.
Hindoo Law (Coparcenary).
,, ,, (Inheritance and Succession) 13, 45, 51, 57, 61, 70, 77, 96.
,, ,, (Sale) 13.
,, Widow 58, 101.
Limitation (Act XIV of 1859) 249.
Lunatic 20.
Mahomedan Law 15, 35.
Maintenance 38.
Representative 8.
Self-acquired Property 4, 8.
Sister.
Step-brother.
Streedhun 12.
Will 43.

Brother's Daughter.

See Brother's Daughter's Son.
Hindoo Law (Inheritance and Succession) 17.
Mahomedan Law 15.

Brother's Daughter's Son.

See Hindoo Law (Inheritance and Succession) 3, 7, 17, 21, 42.

Brother's Grandson.

See Hindoo Law (Inheritance and Succession) 61.
Res Judicata 11.

Brother's Son.

See Brother's Son's Daughter.
,, ,, Daughter's Son.
,, ,, Son's Son.
Certificate 86.
Hindoo Law (Inheritance and Succession) 52, 71, 87.
Hindoo Widow 79.
Nephew.

Brother's Son's Daughter.

See Brother's Son's Daughter's Son.
Hindoo Law (Inheritance and Succession) 60.

Brother's Son's Daughter's Son.

See Hindoo Law (Inheritance and Succession) 113.

Brother's Son's Son's Son.

See Hindoo Law (Inheritance and Succession) 113.

Brother's Widow.

See Hindoo Widow 11.
Will 49.

Buddhist.

See Will 28.

Building.

1. A person who stands by and allows another to erect a *pucka* — on his land, must be considered to have acquiesced in the act, and cannot therefore sue for demolition of the —, but only for damages or for the rent of the land on which the building stands.—W. R. Sp. 166. *See also* 11 W. R. 574; 12 W. R. 495; 17 W. R. 97, 466; 20 W. R. 328; 25 W. R. 211. *See* 17 W. R. 383.

2. Buildings erected on the land and all other fixtures go with the land.—2 W. R. 123.

3. Where a trespasser tortiously builds on another's land, the party injured may destroy the — if he did not acquiesce in the act of injury.—3 W. R. 71.

4. Huts erected on land after co-sharer has objected, may be ordered to be pulled down if made without his permission.—5 W. R. 108. *See also* 10 W. R. 171. *But see* 9 *post.*

5. Erection of wall. *See* Right to Light and Air 4; Trespasser 4; 9 *post.*

6. According to the laws and customs of India, buildings and other such improvements made on land do not, by the mere accident of their attachment to the soil, become the property of the owner of the soil. If he who makes the improvement is not a mere trespasser, but is in possession under a *bonâ fide* title or claim to title, he is entitled either to remove the materials or to obtain compensation for the value of the building, at the option of the owner.—(F. B.) 6 W. R. 228. *See also* 10 W. R. 258, 15 W. R. 360, 16 W. R. 169, 17 W R. 97. *But see* 9 W. R. 115. *Quære* whether the materials of a house to be dismantled are fixtures and appertain to the land.—14 W. R. 487.

7. A ryot with a permanent right of occupancy may build a *pucka* house on his land.—6 W. R. (Act X) 10.

Where a ryot with a right of occupancy for agricultural purposes transfers it to another, the transferee cannot convert the land into a dwelling-house and appurtenances. —24 W. R. 220.

8. Where a party, partly with his own funds and partly with money subscribed, erects a — for a school, but never gives the property to the school, and never acquiesces in the managers entering upon it, if the managers enter upon it, they do so as trespassers; and if he acquiesces in their taking possession, he does not thereby convey the property to the subscribers, and is not bound to do more than return the money subscribed.—7 W. R. 178.

9. Where defendant had gone to the expense of — a wall upon land of which he was joint owner,—*Held* that it would not be equitable to have that wall demolished at the suit of his co-sharers without their showing that it caused any injury to them.—13 W. R. 337 (*foot-note*), 16 W. R. 140 (*foot-note*), 21 W. R. 373 (*foot-note*), 22 W. R. 286. *See* 4 *ante.* So also where defendant had built houses and turned *puteet* land into a village; the plaintiff's remedy being to apply for a partition.—18 W. R. 12, 21 W. R. 373, 21 W. R. 80.

10. In a suit for the demolition of a — built by defendant upon land lying between the premises of the two parties to the dispute, where plaintiff claimed the land as owner, and failed to establish that title, he was not allowed to fall back upon a title by prescription.—15 W. R. 81.

11. A house built on a tenure cannot be considered an "incumbrance" within the meaning of s. 16 Act VIII of 1865 (B. C.)—15 W. R. 360.

12. A person is not entitled to remove additions which he may have made to a — unless he can remove them without injuring the original —. He will at most be entitled only to compensation for present value of or the expenses incurred by him in making the additions.— 15 W. R. 363.

13. A decree for the removal of a — upon his land may be given to the owner even though he has stood by and allowed the defendant to construct it, provided the — is not substantial and has not cost much, and the materials may be removed without difficulty.—16 W. R. 161.

14. A claim to occupy a — cannot be maintained on the ground of a previous tenant's long occupancy of the land as against a landlord who has, since the death of such tenant, exercised rights of ownership over the land.—*Ib.*

See Bastoo Land.
Compromise 22.
Co-sharers 31*a*, 37.
See Criminal Trespass 1.
Damages 60.
Ejectment 111.
Encroachment 2.
Enhancement 118, 122, 151, 170, 219, 233, 250.
Hindoo Law (Coparcenary) 58, 97.
,, Widow 40.
House.
Huts.
Indigo 7.
Jurisdiction 85, 117, 143, 287, 378, 396, 421, 422.
Land 1, 4.
Landlord and Tenant 8, 37, 39, 40, 41, 55.
Lease 72.
Market.
Municipal 9, 31.
Occupancy 96.
Partition 15, 18.
Practice (Attachment) 51.
,, (Execution of Decree) 88, 217.
Registration 82.
Right to Light and Air.
Shops.
Stalls.
Vendor and Purchaser 61.

Bullocks.

See Limitation (Act IX of 1871) 28.
Salt 2.

Bund.

See Embankment.

Bundhoos.

See Hindoo Law (Inheritance and Succession) 10, 73, 78.

Bunkur.

Nature of — rights.—(P. C.) 3 W. R., P. C., 19 (P. C. R. 578); 25 W. R. 157.

See Churs 79.

Burial.

1. Burial Fees. *See* Limitation (Act IX of 1871) 31.
2. Burial Ground. *See* Land Dispute 57; Municipal 24.

Burmah.

See Barrister 1.
Excise 8.
Jurisdiction 453.
Moulmein.
Pegu.
Rangoon.
Recorders.
Sunday 2.

Burning Ghat or Ground.

See Municipal 24.
Nuisance 19.

Business (Carrying on).

See High Court 154.
Jurisdiction 18, 64, 73.
Partnership.
Putnee Talook 108.
Sale 196.

Butwarra.

See Partition (Butwarra).

Byahi.

See Hindoo Law (Inheritance and Succession) 9.
Marriage 8.

Bye-bil-wuffa.

See Lunatic 21.
Mortgage 56, 85.
Registration 80.

Bye-Mokasa.

1. According to the Mahomedan law, possession, under a deed of — in lieu of decree, is not a condition precedent to its validity.—3 W. R. 133.

2. Proof of title under a deed of — cannot be dispensed with by plaintiff alleging that defendant is a purchaser in execution under a decree which has since been set aside.—7 W. R. 273.

3. A Mahomedan widow's claim for unpaid dower, when it does not, by virtue of a — executed by her husband, become a preferential charge on the estate, constitutes a debt payable *pari passu* with the demands of other creditors.—(P. C.) 17 W. R. 525.

See Onus Probandi 221.

Byragee.

A Hindoo becoming a —, if he chooses to retain possession of, or to assert his right to, property to which he is entitled, does an act which may be morally wrong, but in which he will not be restrained by the Courts.—10 W. R. 172.

Cachar.

Superintendent of —. *See* Appeal 61.

Calcutta.

See Contract 41.
Land taken for Public Purposes 22.
Majority 10, 11.
Practice (Criminal Trials) 58.

Calendar.

Object of Column 13 of the —.—7 W. R., Cr., 24.

See Accused 8.
Limitation 214.
" (Act XIV of 1859) 259.

Canoongoe.

See Churs 57.
Evidence (Documentary) 30, 86.

Capital Punishment.

1. Where a prisoner was pregnant, the sentence of death passed upon her was ordered not to be carried out until after her delivery.—W. R. Sp., Cr., 1.

2. Being quick with child is a bar to eventual —. 3 W. R., Cr., 15; (4 R. J. P. J. 574).

3. But — should be pronounced on a conviction for murder even if the accused be pregnant, although the execution of the sentence should be deferred till after delivery. —15 W. R., Cr., 66.

4. The fact that, except death, no punishment more severe than that which the prisoner is undergoing at the time of the commission of the offence can be inflicted, is not of itself sufficient to justify the passing of a sentence of death. —19 W. R., Cr., 68.

See High Court 170.
Murder 1, 12, 28, 30.

Carrier.

1. Liability of consignees where goods have been delivered at a place other than that contracted for and without notice of despatch and delivery.—3 W. R. 163. *See also* 17 W. R. 532.

2. The Lord's Day Act 29 Car. II c. 7, is not applicable to Moulmein; and even if it were, the ordinary course of business among merchants there is to land goods on Sunday if necessary. Where a vessel arrived at Moulmein on Saturday evening and left at daybreak on Monday, and the consignees did not land their goods on Sunday, they were held not entitled to damages as against the owners of the vessel.—3 W. R., R. C., 2.

3. Rights and liabilities of consignees, upon a variation in the form of making the consignments.—(P. C.) 4 W. R., P. C., 1 (P. C. R. 592).

4. Plaintiff delivered jute to the I. G. S. N. Co. at Serajgunge for delivery at the E. B. Railway Co.'s station at Sealdah where freight was payable on delivery and was so paid. A portion of the jute was not delivered, and a suit to recover its value was brought against the E. B. Railway Co. *Held* that the suit could not be dismissed on the ground of want of privity without further investigation.—17 W. R. 240.

5. Where the consignees refused to take delivery of two bundles of cow-hides carried by the Railway Company on the ground of shortness in the number of pieces, and there was no evidence that the bundles had been broken, or the hides counted by pieces, the Railway Company was declared not liable.—21 W. R. 380.

6. A Steam Navigation Company was employed by plaintiff to carry cargo from Calcutta to Rangoon and to deliver it into the receiving shop, or to land it at the consignee's expense, their liability ceasing as soon as the goods were free from the ship's tackle. When the ship arrived at port, the consignee not having had his own boats alongside, the goods were put into other boats, one of which, through the negligence of the boatmen, was swamped and the contents damaged. Plaintiff sued for damages. *Held* that as defendants were not shown to have neglected the duty of taking reasonable and proper care in the selection, they were not liable for the loss incurred.—24 W. R. 74.

See Bill of Lading.
Freight.
Negligence 2.
Railway 2, 8.
Set-off 5.

Caste.

1. A suite will lie for restoration to — and for damages and compensation for cost of restoration.—7 W. R. 299. *See* 11 W. R. 457.

2. In a suit for damages for loss of — caused by a false accusation, where defendant denies that he made any accusation, and it is proved that he did, he should be allowed an opportunity of proving that the accusation was not false.—*Ib.*

3. On questions of — a Judge has a right to come to a finding based on history or the custom of the country.—14 W. R. 364.

See Defamation 5.
Guardian 14.
Keonghur Raj 1.
Libel 1.
Mahomedan Law 8.
Marriage 21.
Outcaste.
Society.
Witness 70.

Cattle.

See Cattle Trespass.
Jurisdiction 182.
Occupancy 69.
Splitting Cause of Action 8.
Theft 16.

Cattle Trespass.

1. A Magistrate cannot, under s. 13 Act III of 1857, punish except for an act of forcible opposition to the seizure of cattle damage-feasant.—7 W. R. 155.

2. When mischief caused by — falls under s. 425 Penal Code and s. 17 Act III of 1857.—10 W. R., Cr., 29. *See also* 14 W. R., Cr., 31.

3. Neither s. 62 Act XXV of 1861 nor Act III of 1857 empowers a Magistrate to pass a general order against cattle or horses being allowed to run at large on the public roads.—12 W. R., Cr., 36, 18 W. R., Cr., 21.

4. Where a person whose cattle have been illegally distrained fails to take advantage of the remedy provided by s. 14 Act III of 1857, he is not thereby prohibited from bringing an action for damages.—15 W. R. 279.

5. Where there was a dispute as to the ownership of land on which the complainant's cattle were found, the complainant stating that the land belonged to A who gave him the right to graze his cattle there, and the party charged (who had seized and impounded the cattle) claiming the land as his own,—*Held* that the Magistrate, instead of referring the parties to the Civil Court, should have disposed of the case himself under s. 22 Act I of 1871.—23 W. R., Cr., 2.

See Damages 23.
Indigo 15.
Nuisance 7.
Police 7.

Cause of Action.

1. Discretion of plaintiff to join several causes of action in one suit or to bring separate suits.—S. C. C. 75.

2. Breaches of contract in two different years are different causes of action.—*Ib.* 80.

3. Special appellant on 18th July 1835 purchased an estate at a sale in execution of decree, which sale was finally reversed, at the suit of the judgment-debtor, on 9th October 1841, and the judgment-debtor was ordered to refund the purchase-money to special appellant. Before the decree-holder applied for satisfaction of his decree, a portion of the purchase-money had been credited by the Collector to arrears of revenue due by the judgment-debtor on account of other estates, and it was not till May 1854 that special appellant was informed that the Civil Court could give him no relief,—*Held* that the — accrued from May 1854.—2 Hay 161.

4. Where a plaint discloses no —, the Court cannot decide questions connected with the merits, but must reject the plaint without summoning the defendant. The consent of the defendant cannot alter the nature of the cause and render it fit for trial.—Sev. 565. *See* 12 W. R. 82.

5. In a suit for specific performance of a contract to convey a portion of property expected to be decreed, the — arises from date of decree.—1 W. R. 144.

6. The right to rent on its accruing due, and not the decree for it, is the —.—2 W. R. 277.

7. Arrears of rent for successive years are several and distinct causes of action.—2 W. R. (Act X) 81 (4 R. J. P. J. 63), 17 W. R. 380.

8. Different suits may be brought on different causes of action although the object to be gained may be the same.—4 W. R. 2.

9. The non-payment of the arrears of rent decreed in a summary suit gives the — to a regular suit under s. 18 Reg. VIII of 1819.—4 W. R. 99.

10. The order of a Special Commissioner under Reg. III of 1828, declining for want of jurisdiction to entertain an objection by plaintiff to certain resumption proceedings between the Government and a third party, cannot constitute a — either against the Government or against the third party.—7 W. R. 373.

11. Each alienation by a minor's guardian constitutes a distinct —, and a suit which combines several of them in one plaint ought not to be entertained.—8 W. R. 364.

12. Where once the — is matured, the subsequent occurrence of further damage after or before adjudication of the original matter does not originate a fresh —.—9 W. R. 121.

13. Where a plaint discloses no — as regards one of the plaintiffs, no decree can be passed in favor of that plaintiff.—10 W. R. 49.

14. Where a party purchasing a portion of a putnee is unable to get possession and sues the ryot for rent under Act X, the plaint is bad as against the ryot, but it discloses a — against the zemindar.—10 W. R. 209.

15. Where the entire sum due on a bond with penal interest to date of decree has been recovered, the — of the widow of one of the judgment-creditors to his share under the decree has fully accrued.—10 W. R. 397.

16. The repudiation of a tenant's title by his landlord can only form one —, however often that repudiation is repeated.—13 W. R. 64.

17. It is not the title, but the infringement of it, which constitutes the —; and two suits are not necessarily brought upon the same — merely because the title relied on in both cases is one and the same.—13 W. R. 196.

18. Where plaintiff alleged that certain properties, which he sued to have declared liable for the amount of certain decrees, passed intact to his judgment-debtor's admitted representative, the other defendants being men of straw,—*Held* that plaintiff had in reality but one — against one party.—13 W. R. 271.

19. In a suit to recover money due upon a bond, brought by the representatives of the original bond-holder against a party to whom the obligor's estate has descended by inheritance, the — was held to have accrued from the time when the debt became due under the terms of the bond.—13 W. R. 313.

20. The words — within the meaning of cl. 12 of the High Court's Charter mean not merely the right of the plaintiff and the infraction of it by the defendant, but include the facts out of which the plaintiff's right arises.—16 W. R. (O. J.) 16.

21. In a suit to recover possession of lands which, after purchase by plaintiff, had been exchanged by the vendor with other lands, plaintiff's complaint being that he had been dispossessed of these other lands,—*Held* that the — arose when he was deprived of the lands last mentioned.—16 W. R. 270.

22. A compromise by which a lessee relinquishes the land, and to which the owner is no party, creates no — on the part of the owner or of any person holding under him.—17 W. R. 377.

23. The words — in s. 2 Act VIII are to be construed with reference rather to the substance than to the form of an action.—(P. C.) 20 W. R. 377, 25 W. R. 1. *See also* 25 W. R. 225.

24. A suit will not lie for damages apart from the — out of which the damages arise.—21 W. R. 154.

25. The words — in s. 5 Act VIII need not be interpreted as meaning the whole —.—23 W. R. 63.

26. A Court of Appeal ought not to dismiss a suit upon the ground that the plaint discloses no —, where, in the course of the trial in the first Court, a — was sufficiently established, although not put forward in the plaint.—25 W. R. 204.

See Abatement 11.
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CAUSE OF ACTION (*continued*).
See Ejectment 105.
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,, (Act XIV of 1859) 66, 67, 78, 122, 125, 189, 152, 162, 190, 200, 207, 219, 232, 234, 250, 265, 268, 274, 285, 286, 305, 306, 330.
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See Deed of Sale 2.
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,, (Oral) 20, 55.
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Certificate.

1. When to be granted under s. 11 Act XLII of 1860.—S. C. C. 55.

2. Cancellation of — under Act XXVII of 1860, and issue of fresh — . Payments to first certificate-holder. —S. C. C. 99. *See* 74 *post.*

3. Where a widow's right to a — in respect of her deceased husband's estate was preferred to the claim of those who brought forward a will by which the husband's property could not devolve on her —.—1 Hay 102.

4. Where a Judge struck off an application for a — under Act XX of 1841 more expeditiously than the practice of the Civil Courts warranted, the case was remanded to him for re-trial.—1 Hay 250.

5. The intention of Act XXVII of 1860 in allowing the grant of a — , was not to decide doubtful questions of inheritance, but to supply means for *bonâ fide* collecting debts actually existing, and necessity for it must be shown. —2 Hay 299. *See also* 10 W. R. 105, 13 W. R. 356, 17 W. R. 174, 193, 21 W. R. 24, 22 W. R. 102.

6. The object of Act XXVII of 1860 is to facilitate the collection of debts on successions, and for the security of persons paying debts to the representatives of deceased persons. Questions arising between various claimants of the property of the deceased must be duly determined, but meanwhile a — under the Act should be granted to any person deemed by the Court entitled to claim it, and the Court may take security from the person so appointed.—2 Hay 300.

7. When heirs are at variance, the — may be granted to the heirs to the larger share of the property.—2 Hay 301.

8. The rule in s. 3 Act XL of 1858, which declares that no one can institute or defend any suit connected with the estate of which he claims the charge until he shall have obtained a — , is one that ought not to be relaxed. 1 R. J. P. J. 118 (Sev. 191). *See* 14 W. R. 453.

9. Under the discretionary power given by s. 3 Act XL of 1858, the natural guardian of a minor, a mother, being also a co-plaintiff in her own right, may be permitted to carry on a suit on the part of the minor till a — can be regularly obtained. No money need be paid under a decree obtained in such suit till grant of — ; and if any one else is constituted guardian, his concurrence will be necessary to carrying on the suit on behalf of the minor.—Sev. 847.

10. The effect of an order under Act XX of 1841 is not to establish a will incontestibly against the whole world, or prevent a will from being impeached in a suit if set up to defeat the rights of parties claiming under the Law of Inheritance. A daughter, claiming as heiress-at-law, may sue in the Civil Court, within 12 years from the death of her father, to establish her title to possession of land left by him, and to set aside an adverse will, upon which a — was granted under Act XX of 1841.—W. R. Sp. 227.

So also as regards a decision under Act XXVII of 1860.—16 W. R. 214, 18 W. R. 255.

11. The executor under a will, if it be not contested, has an undoubted right to a — under Act XXVII of 1860, though he be not the legal heir. If the will be contested, the Judge should enquire into its validity; and if he consider it proved, give a —, leaving the parties dissatisfied to set it aside by a regular suit.—W. R. Sp., Mis., 4.

12. Where a claim was made under a will to a — to collect the debts of a deceased Mahomedan under Act XXVII of 1860, and no necessity for collecting debts was shown, and the inheritance was disputed, the Judge was held right in refusing to give a — under that Act.—W. R. Sp., Mis., 6.

13. Under Act XXVII of 1860 a — cannot be obtained

CERTIFICATE (*continued*).

recognising the applicant as representative both of her deceased husband and the husband's father.—W. R. Sp., Mis., 10.

14. A — under Act XXVII of 1860 is not indispensable in order to allow a party who is next heir to come in to represent a deceased party in a suit.—W. R. Sp., Mis., 13; 8 W. R., Mis., 9 (4 R. J. P. J. 389).

15. A Court cannot, solely on the petition of a party, cancel a — granted to him under Act XX of 1841, or declare that his trust and guardianship have ceased. If he gives up his duties of his own accord, he does so on his own responsibility, and the Court will not order him to act.—W. R. Sp., Mis., 23.

16. On an application for a — under Act XXVII of 1860, where the applicant claimed as heir of the deceased, the Judge was bound to enquire summarily into the question of the marriage of the deceased and the consequent legitimacy of his children.—W. R. Sp., Mis., 25.

17. It is not the policy of Act XL of 1858 to prevent parties from performing their natural duties by the younger members of their family who may be deprived of their natural parents; and it should not be considered as an axiom that an uncle or other near relative will necessarily defraud a minor, and ought therefore to be refused a — under that Act.—W. R. Sp., Mis., 26.

18. As a general rule, the heir to a deceased person should have a — under Act XXVII of 1860. If he, as heir, is entitled to the whole surplus of the estate, the fact of his having been in a hostile or friendly position as regards the deceased will not be material. Where there are several heirs and no dispute among them, he who is entitled to the largest share may, in the absence of other disqualifying circumstances, and in the discretion of the Court, be entrusted with the duty.—W. R. Sp., Mis., 41. *See also* 8 W. R. 398.

19. Under s. 3 Act XL of 1858, any friend or relative of a minor may be allowed at the discretion of the Court to sue on his behalf without a — of administration.—1 W. R. 260; 6 W. R., Mis., 116; 8 W. R. 197; 9 W. R. 492; 13 W. R. 202; 16 W. R. 231; 17 W. R. 492; 25 W. R. 97.

The discretion of the Court cannot be interfered with in appeal.—17 W. R. 144.

20. Two certificates of administration cannot run together, but a — of administration to one person may be no bar to a — of guardianship to another.—1 W. R., Mis., 2.

21. A — of administration under Act XXVII of 1860 need not be taken out by the representatives of a party seeking to execute a decree obtained by their ancestor, if the Court executing the decree be satisfied that they are the proper representatives.—1 W. R., Mis., 11; 3 W. R., Mis., 9 (4 R. J. P. J. 389); 7 W. R. 393; 11 W. R. 204.

22. A — for collecting debts under Act XX of 1841 is not transferable.—1 W. R., Mis., 28.

23. A widow is entitled (in preference to a cousin and partner) to a — under Act XXVII of 1860 to collect the debts (joint as well as separate) of her late husband.—1 W. R., Mis., 31. *But see* 17 W. R. 402.

24. Effect of — under Act XXVII of 1860 when the relationship to which it certifies is contested.—2 W. R. 70.

25. The assertion of an exclusive right as *tenait* to a certain talook by a person representing himself as cousin of the deceased, cannot prejudice the right of brothers, as next heirs, to a — of administration.—2 W. R., Mis., 6.

26. Acts of waste on the part of a Hindoo widow, in regard to her husband's property, would, if proved, be a ground for withdrawing a — granted to her under Act XL of 1858.—2 W. R., Mis., 13.

So also a — granted under Act XXVII of 1860.—18 W. R. 258.

27. The power of an executor to appoint a substitute, and all such questions arising out of a will, are not matter for summary investigation on application for a — of administration.—2 W. R., Mis., 47.

28. In a suit by an executor of an alleged adopted son, upon a bond of which plaintiff is in possession, the Lower Appellate Court has no jurisdiction to direct enquiry into the *de jure* title of the plaintiff if he has obtained a — under s. 2 Act XXVII of 1860 or is in *de facto* possession of the deed.—3 W. R. 24.

29. A mother is not entitled to a — under Act XXVII of 1860 to collect debts due to her deceased daughter, in preference to the husband of the deceased; but such — cannot authorise the husband's interference with the mother's possession of the landed property which she claims as her own.—3 W. R., Mis., 3.

30. A Judge can, under ss. 8 and 21 Act XXVII of 1860, empower the holders of a — under that Act to negotiate a Government security mentioned in the will.—3 W. R., Mis., 18.

31. Without a — under Act XL of 1858, a Court may refuse to hear even a natural guardian of right; but where the Court in the exercise of the discretion vested in it, does hear him, the absence of the — will not vitiate the proceedings.—4 W. R. 71.

32. Nor does the law vitiate the private acts of such a natural guardian.—*Ib.*

33. Before grant of — to a widow as heir, the claim of parties under a *tukseemnamah* should be enquired into.—4 W. R., Mis., 19.

34. A — may be granted to a widow, as guardian of her minor son, to collect her husband's debts, notwithstanding that the husband's adoption had been set aside.—5 W. R., Mis., 10.

35. Upon an application for a — under Act XXVII of 1860, the Judge ought simply to ascertain whether the applicant or any one else had a right to the — sought and to grant the same accordingly.—5 W. R., Mis., 20; 8 W. R. 317, 9 W. R. 502.

36. Cancellation of a — under Act XXVII of 1860 when not a matter for decision in the Summary Department.—5 W. R., Mis., 48.

37. S. 6 of the same Act contemplates the application for cancellation to be made to the High Court and not the Zillah Court.—*Ib.* *But see* 9 W. R. 394, 11 W. R. 153.

38. According to Hindoo law, the *chela* succeeds to, and, as such, is entitled to a — entitling him to collect the debts of a deceased Mohunt.—5 W. R., Mis., 57. *See* 81 *post.*

39. A widow was held entitled to a — under Act XXVII of 1860 to collect the debts of her deceased husband, in preference to his nephew who was separate in food, residence, and estate from his uncle at the time of the latter's death.—6 W. R. 139. *See* 13 W. R. 199, 469; 14 W. R. 415.

40. In a suit for rent by a devisee under a will, it is not necessary for him to obtain a— .—(F. B.) 6 W. R. (Act X) 71.

41. A mother is entitled to a — of administration, under Act XL of 1858, to the estate of her minor son, with a view to bringing a suit to recover the estate of his deceased grandfather. Difference between Act XL of 1858 and Act XXVII of 1860, explained.—6 W. R., Mis., 23. *See also* 23 W. R. 330.

42. Where two Hindoo widows who, in order to realize the amount of a decree which they had obtained as guardians of their step-son, applied for a — under Act XXVII of 1860, and their application was opposed by the husband's step-brother on the ground that they were entitled only to maintenance, it was held that the first thing to be proved was whether the son had a separate estate, and was not in joint possession with his father's step-brother; and that the fact of the decree being in the names of the widows did not prove separate possession.—6 W. R., Mis., 32.

43. No one claiming to be entitled to the effects of a deceased person, can enforce the payment of a debt due to the deceased without the production of a — under Act XXVII of 1860.—6 W. R., Mis., 34.

44. Where a minor claimed an estate as adopted son, a — appointing a guardian under Act XL of 1858 will not, until his adoption be proved, entitle the minor or his guardian to interfere with the possession of the estate by the deceased's widow who denied the adoption and claimed the estate as heiress.—6 W. R., Mis., 47.

45. An administrator holding a — under s. 7 Act XL of 1858 is not bound to file in Court periodical accounts of moneys realized and disbursed on account of the minor. Any application for the removal of such guardian or manager under s. 21 must be supported by proof of malversation or misconduct.—6 W. R., Mis., 53. *See also* (F. B.) 7 W. R. 522, 23 W. R. 278.

46. Mere inaccuracy of language or misdescription will not vitiate a sale — or defeat the rights of the auction-

CERTIFICATE (*continued*).

purchaser. The intention of the parties must be looked to.—7 W. R. 245, 15 W. R. 490, 21 W. R. 93. *But see* 19 W. R. 276.

47. Under s. 21 Act XL of 1858, a — granted under s. 7 can be recalled summarily under any circumstances, and also without any account having been previously taken in a regular suit under s. 19.—(F. B.) 7 W. R. 522. *See also* 9 W. R. 555, 14 W. R. 453, 23 W. R. 278.

48. A — under Act XXVII of 1860 authorises the holder of it to collect debts due to the deceased, but not to recover property which belonged to the deceased from a person wrongly in possession.—8 W. R. 1. *See also* 9 W. R., Cr., 18; 18 W. R., Cr., 34.

49. Where an application is made for a — under Act XXVII of 1860, the Judge ought not to enquire whether any debts are due and whether or not they are barred by limitation, but simply to determine the right to the —, and if there is such a right, to grant the —.—8 W. R. 12, 317. *See also* 9 W. R. 240, 10 W. R. 4, 18 W. R. 271, 24 W. R. 211.

But the — should be granted only when it is shown that the deceased had debts owing to him, in other words, that there are debtors of the deceased; and a person in whose hands are the surplus sale proceeds of a property belonging to the deceased, is a debtor within the meaning of s. 2. —24 W. R. 203.

50. When a Hindoo female applies for a — under Act XL of 1858 in respect of an estate which she alleges to belong to an adopted son, the Judge ought merely to enquire whether the boy is a minor, and whether the petitioner, being a near relative, is a fit person to be entrusted with the charge of the minor's property.—8 W. R. 25.

51. Nephews appointed by will to manage testator's property, partly in their own right and partly as guardians of a minor son, are entitled to one — under Act XXVII of 1860 to collect the debts of the whole estate, and to another — under Act XL of 1858 to take charge of the minor's share.—8 W. R. 105.

52. Act XXVII of 1860 provides no appeal from the order of a Zillah Court as to the form of —.—8 W. R. 376.

Nor any appeal except as to the grant of a —.—24 W. R. 362.

Nor as to the amount of security demanded from the applicant.—17 W. R. 566.

But an appeal lies from the result of an enquiry, or omission to make an enquiry, under the Act.—20 W. R. 312.

53. The absence of a husband from home for nine years affords no presumption among Hindoos that he is dead, so as to entitle his wife to apply for a — under Act XXVII of 1860.—8 W. R. 421.

54. Act XL of 1858 comprises the case of all minors not under the Court of Wards and not being European British subjects, and acts irrespective of the Mahomedan law, which can be no guide to the Civil Court in determining whether an applicant should or should not have a — of administration.—9 W. R. 334.

55. S. 7 Act XL looks as much to the fitness of the relative as to his propinquity; and when two relatives claim the right to administer, the Court is at liberty to disregard the latter qualification and look to the former.—*Ib.* *See also* 9 W. R. 548.

56. The law prescribes no limitation as to the time within which an application should be made for a — under Act XL of 1858.—9 W. R. 342.

57. Where the will propounded by an applicant is a genuine document, the — prayed for must be granted notwithstanding the existence of any natural guardian, s. 7 Act XL leaving no discretion to the Court in such cases.—*Ib.* *See also* 17 W. R. 99.

58. When an application is made for a — under the same Act, a party asserting certain rights adversely to the minor must proceed by a regular suit.—*Ib.*

59. A — under s. 8 Act XL must contain no specification of the extent or nature of the property to which the minor is entitled.—9 W. R. 459.

60. It is purely an authority for the administration of property and ought never to be issued where there is neither present right to possession nor even a vested right to future possession.—9 W. R. 582.

60*a*. Separate certificates under Act XXVII of 1860 cannot be granted for the collection of fractional shares of the estate of the deceased.—10 W. R. 105, 12 W. R. 307, 13 W. R. 265. *See* 91 *post*.

61. There is no particular form prescribed for the — to be sent under s. 284 Act VIII by one Court from the execution of a decree by another.—10 W. R. 137.

62. A — granted under Act XL of 1858 gives the right to collect the debts due to the estate; but if the debtor objects to pay the debt, that right cannot be enforced in Court without a — under Act XXVII of 1860.—10 W. R. 462.

63. Where an applicant for a — under Act XXVII of 1860 is opposed by a party claiming under a will, the Judge is bound to determine which of the claimants is entitled to the —.—*Ib.*

64. Where an applicant for a — is entitled to a share, the smallness of her share will not debar her from getting a — entitling her to collect according to the share.

65. A Judge ought not to grant a — of representation to a party producing a will without being satisfied that the will is genuine.—11 W. R. 171.

66. Where the widow of a proprietor, who had separated from his brother (the objector) applies for a — under Act XXVII of 1860 on the ground of right of inheritance and a will, it is sufficient, for the purposes of the Act, to decide whether the estates of the brothers were joint or separate when applicant's husband died.—11 W. R. 341.

67. Where an application for a — under Act XXVII of 1860 is opposed by one claiming to be the legal heir and alleging that the will is spurious, the only point to be determined is the validity of the will.—11 W. R. 388. *See also* 12 W. R. 454, 15 W. R. 73, 17 W. R. 277.

68. A stranger may be appointed by will to succeed to the trust of *wuqf* property, the legal heir succeeding to private property, and each may have a — to collect his respective debts.—*Ib.*

69. If there are several applicants for a — under Act XXVII of 1860, the heir or person having the largest interest is entitled to it, and the Court may require him to give security for any small interest not sufficiently protected. —12 W. R. 38, 13 W. R. 143.

70. Only persons claiming a right to have charge of property in trust for a minor have a right to make applications under Act XL of 1858, and they only can appeal under s. 28; a mere creditor having no *locus standi*.—12 W. R. 101. *See* 13 W. R. 256.

71. The summary enquiry provided in s. 6 refers to the grant of — to parties claiming it; but the Act does not allow third parties to demand an enquiry into matters having nothing to do with the genuineness of the trust.—*Ib.*

72. There is nothing to prevent the grant of a — under Act XL of 1858 and one under Act XXVII of 1860 to the grandmother of minors during the father's lifetime.—12 W. R. 119.

73. The circumstance of a party on the day of his death informing a debtor of his that he has given all moneys due to him to his mother-in-law is sufficient indication that she is the proper person to receive the — under Act XXVII of 1860.—12 W. R. 239.

74. Procedure in granting fresh — under the same Act in supersession of a former one.—*Ib.* *See* 2 *ante*.

75. A nephew adopted according to the *kritima* form is entitled to a — under Act XXVII of 1860, in granting which the Judge must look as well to fitness as to propinquity.—12 W. R. 356.

76. Where an application is made under Act XXVII of 1860 on the allegation that there are debts due to deceased's estate, and the allegation is not denied, the Judge is bound to hear the petition.—12 W. R. 505.

77. An order recalling a — under Act XL of 1858, though professedly made under s. 12, is really made under s. 21.—12 W. R. 243.

78. Where a Judge cancels his own order and appoints the Collector to take charge of a minor's estate, a friend of the minor may on his behalf appeal under s. 28 Act XL of 1858.—13 W. R. 256.

79. Where an application for a — under Act XXVII of 1860 has been transferred by the High Court under s. 19 Act XVI of 1868 from the file of a Judge to that of a Subordinate Judge, the order of the latter is appealable to the Judge, and only *specially* appealable to the High Court. —13 W. R. 395.

Certificate (*continued*).

80. It is the duty of the Judge to enquire into the truth of the charges of immorality brought against the holder of a — under Act XL of 1858.—13 W. R. 454.

81. The person entitled to a — under Act XXVII of 1860 enabling him to collect the debts due to the estate of a deceased ascetic or devotee must be the disciple or spiritual brother or preceptor of the deceased, even though he be mentally incapable of succeeding to the office of the deceased.—14 W. R. 383.

82. Revocation of — under Act XXVII of 1860 on the ground that the Judge had no jurisdiction to grant it, inasmuch as the deceased at the time of his death was not ordinarily residing within the jurisdiction of the Zillah.—14 W. R. 464.

83. Object of taking security from the holder of a — under s. 5 Act XXVII of 1860, and power of Zillah Judge of his own motion to release security taken by order of High Court.—15 W. R. 108.

84. Where a compromise was effected among the members of a joint Hindoo family and they severally took separate shares of the family property, on the death of one of them his adopted son with the consent of his widow was held entitled to a — of administration in preference to the other members.—15 W. R. 135

85. A — under Act XL of 1858 is rightly given to the guardian of an adopted minor where there is no doubt of the fact of adoption; an objector on the ground of illegal adoption, not claiming to be guardian, has no *locus standi*.—15 W. R. 166.

86. A nephew (brother's son) is entitled to a — of administration in preference to a deceased son's daughter's son.—15 W. R. 328.

87. An order made under s. 21 Act XL of 1858, whether it withdraws or not a — granted under that law, is appealable under s. 28. -15 W. R. 192. *See contra* 22 W. R. 179.

88. Where there was evidence of the deceased having assigned his property to his illegitimate sons and acknowledged them as his sons, a — under Act XXVII of 1860 to administer to his estate was granted to them.- 17 W. R. 189.

89. Under the Mitacshara law, a brother's widow is not entitled to the management of her husband's share of a joint family property, or to a — under Act XL of 1858, though she may have a — of guardianship. 17 W. R. 237.

90. A — under Act XXVII of 1860 cannot be limited to particular debts.—17 W. R. 238. *See also* 18 W. R. 271.

91. In granting to a party a — under that Act to collect the debts due to the deceased, the Judge was held to have acted rightly in joining with him another person who had an interest in those debts.—*Ib.* *See* 60*a ante*.

92. The marriage of a minor is not a sufficient cause within the meaning of s. 21 Act XL of 1858 for withdrawing a —, without neglect of duty or the like.—17 W. R. 269.

93. The word "residence" in s. 5 Act XL of 1858 is not where the minor may be dwelling when the application for a — is made, but the family house where every member usually resides, though circumstances may arise in which it may be taken to mean otherwise.—17 W. R. 275.

94. The object of a — under Act XXVII of 1860 is to entitle the parties who represent the deceased to realize debts due to the deceased at the time of his death, and not to recover fresh claims that may accrue subsequently to his death and which may be due to other parties.—17 W. R. 343, 22 W. R. 102.

95. A — under Act XXVII of 1860 should be issued directly it is granted, provided the proper stamp prescribed for such — be furnished.—17 W. R. 489.

96. A full sister's son in possession was held entitled to a — under Act XXVII of 1860 in preference to the half-brother.—17 W. R. 562.

97. A — was cancelled under s. 21 Act XL of 1858 in a case where the guardian without sufficient cause withdrew an appeal to set aside a sale of the estate and dealt with the auction-purchaser and obtained a putnee of a portion in his wife's name.—18 W. R. 169.

98. The High Court, under s. 6 Act XXVII of 1860, suspended a — wrongly granted in a case where no list of debts due to the estate of the deceased had been filed.—18 W. R. 330.

But it is not necessary, as a general rule, that a list of debts should be filed before a — can be granted under the Act.—20 W. R. 412. *See also* 24 W. R. 211.

99. Where notice had been issued and the petitioner (who now claimed under a will) did not appear and object to the grant of a — under Act XXVII of 1860 to the widow of the deceased, the Judge was held to have been right in referring the petitioner to a regular suit.—19 W. R. 252.

100. S. 284 Act VIII does not restrict the granting of a — transferring a decree for execution to another Court, to cases where such decree cannot be executed within the jurisdiction of the Court whose duty it is to execute the same. A — may be granted upon its appearing to the latter Court that the decree could not have been completely executed by the sale of the property in its own district, but that it could be so executed by the sale of the property in the other district.—19 W. R. 307.

101. Where a person had no fixed place of residence at the time of his death, the Judge of the district in which his debts are has authority to grant a — under Act XXVIII of 1860.—20 W. R. 286.

102. The powers given by ss. 10, 11, and 12 Act XL of 1858 only accrue upon the happening of the contingency mentioned in s. 9; and the mere fact that a near relative who desires to have the charge of the property is *purdanusheen* is not of itself a disqualification such as would take away the right to claim a — under s. 7.—20 W. R. 432.

103. Although no title is judicially determined as the result of an enquiry under Act XXVII of 1860, yet the Court is bound under the Act to give the — to the person who makes out a title, and for that purpose, when parties are not agreed as to the facts, to try the issues in the ordinary way by the aid of evidence.—20 W. R. 476.

104. Where a widowed daughter, claiming under a will which was not disputed, applied for a — under Act XXVII of 1860, the Judge was held right in granting the application. 21 W. R. 21.

105. A widow who is admittedly the heiress of the deceased, claiming under a will executed by her husband, is a proper person to obtain a — under Act XXVII of 1860, notwithstanding the objection of a person alleging himself to be the adopted son of the deceased.—21 W. R. 31.

106. A District Judge was held to have rightly refused a — under Act XXVII of 1860 for the collection of the debts, not of the Mohunt, but of the endowment itself. 21 W. R. 310.

107. Where an estate is sold, subsequent to the death of the owner, for arrears of revenue, the sale proceeds being payable to the estate of the deceased, there is nothing to prevent the Judge from entertaining the widow's application under Act XXVII of 1860 for a —.—22 W. R. 45. *See* 24 W. R. 203.

108. Where a — under Act XXVII of 1860 for a moiety of the estate of the deceased was granted to each of two heirs, one of the half blood and the other of the full blood, the High Court, on the appeal of the latter who possessed the title-deeds and had performed the *shrad*, ordered the — for the whole estate to be given to him.- 22 W. R. 274.

109. A suit may be maintained for a declaration of title, which may be used as a means for the withdrawal of a — under Act XXVII of 1860.—22 W. R. 301.

110. The decision of a Court granting a — under Act XXVII of 1860 is conclusive as to the right to the —, and the remedy of any person affected by the — lies in a regular suit to recover any sum received by virtue of that —. A suit will not lie merely to set aside the —.—22 W. R. 312.

111. Where a — had been granted to the personal representative of a deceased *sebait* of *debuttur* property, who set up no claim to the property, and the manager of the *debuttur* property on behalf of the surviving *sebait* brought a suit against the — holder for a declaration under s. 15 Act VIII, the District Judge was held to have done right in refusing the declaration.—*Ib.*

112. When the applicant for a — under Act XXVII of 1860 was the husband as well as the cousin of the deceased, —*Held* that the — ought to have been granted to him alone, and not jointly with another cousin who opposed the application.—23 W. R. 25.

113. A — under Act XXVII of 1860 cannot be refused merely because the deceased was a member of a joint Hindoo family. Ordinarily the managing member would

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be the person best entitled to the —, but this would not be the case where the members had fallen out.—23 W. R. 234.

114. The grant of a — under Act XXVII of 1860 on the title afforded by a will, which gives the grantee the estate in respect of which the debts accrued, does not establish a right as executor or legatee within the meaning of s. 187 Act X of 1865.—23 W. R. 252.

115. The receipt of money under a — under Act XXVII of 1860 does not give a title to the money; the holder only becoming trustee for the person to whom the money belongs.—23 W. R. 270.

116. An application for a — under Act XL of 1858 need not refer to the estate of the deceased, but ought merely to set forth that there is property to which the minor is entitled and of which the applicant claims the right to have charge.—23 W. R. 346.

117. According to the Mitacshara law, a person who is seventh in descent from a common ancestor through the female line and therefore not a *bundhoo*, is a stranger to the family and therefore not entitled to a — under Act XXVII of 1860.—23 W. R. 384.

118. The appeal contemplated by s. 6 Act XXVII of 1860, like the claim or opposition under s. 3, should be limited to persons who are in conflict with the original petitioner in claiming the —; the word "title" in both sections meaning merely the title or right to the —.—24 W. R. 92.

119. The finding of a Judge as to the making of a will under which a — under Act XXVII of 1860 is claimed, is *ultra vires* when the will is impugned by a person not claiming the —.—*Ib.*

120. When the question of granting a — under Act XXVII of 1860 is dealt with by the Court with all the available evidence before it as in a regular suit, and the matter of the — is decided upon after full deliberation, the position of the parties becomes very different from what it is at the conclusion of a really summary proceeding. Technically, there may still be the right to bring a regular suit; but the regular suit in such a case is a re-hearing, and the Court is bound to pay due respect to the judgment already arrived at.—24 W. R. 173.

121. On an application by a second wife for a — under Act XXVII of 1860, where applicant's title was based upon a will to which the signatures of the witnesses were found to have been affixed previously to that of the testator,—*Held* that though the document was inoperative as a will, yet inasmuch as it expressed fully the testator's wishes regarding the management of his affairs, and was very distinct as to the confidence reposed in the applicant, she was the proper person to have the —.—24 W. R. 322.

122. A — of administration ought not to be granted without its being proved that there are debts to be collected, and that the person to whom the — is to be granted has the best right to collect them.—24 W. R. 463.

123. Where a — of administration was granted to certain applicants who asked it with reference to a particular debt due under a bond which they put in, and showed that they were joint in estate with the deceased, the — was held rightly granted to them rather than to another member of the family who had separated from the deceased.—25 W. R. 31.

124. The fact of an applicant being the widow of the deceased, and his heiress, was held not of itself to constitute any reason why a — of administration should be granted to her twenty years after his death, in the absence of anything to show the existence of debts or assets belonging to the estate.—25 W. R. 93.

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Cesses.

1. Abwabs and Mahtot and Putwareean. *See* Enhancement 109, 236; Jurisdiction 382; Rent 107.

2. In the absence of a special agreement, a claim for an illegal cess cannot be recovered in a Court of Law.—7 W. R. 453. *See also* 10 W. R. 257.

3. Nor a decree obtained declaratory of a right to levy a cess.—9 W. R. 299.

4. An arbitrary and indefinite cess on ryots, such as is described in s. 54 Reg. VIII of 1793, is prohibited by s. 10 Act X of 1859.—11 W. R. 395.

5. A contract to provide for the collection and payment of an illegal cess is illegal.—*Ib.*

6. Bhikya rents. *See* Jurisdiction 382; Principal and Agent 47.

7. A *purabee* was held not to be in the nature of an *abwab* or illegal cess, but as part of the legal consideration for a contract.—24 W. R. 90.

8. A tehseeldar is bound to account to the landlord for payments made to him by tenants in excess of the rents due from them if made voluntarily; but sums "exacted" by the tehseeldar within the meaning of s. 10 Act X would come under the head of illegal — and are not recoverable under that section.—25 W. R. 8.

See **Enhancement 109, 132, 236.**
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Chakeran Land.

1. Where a party seeking a declaration of title to certain — rests his claim on the Register of 1836, he is bound to show how the lands were omitted from earlier Registers.—W. R. Sp. 353 (L. R. 133).

2. The Registers of — are public records supposed to contain a correct list of — in existence at the Decennial Settlement.—W. R. Sp. 358 (L. R. 132).

3. Lands held in lieu of remuneration by a village chowkeedar, though unquestionably — within the meaning of s. 41 Reg. VIII of 1793, were not resumable at the pleasure of the zemindar, if the public, or the Government representing the public, had an interest in the appointment of the chowkeedar.—(P. C.) 1 W. R., P. C., 26 (P. C. R. 542, 3 R. J. P. J. 285). *See* 14 W. R., P. C., 28.

4. Long possession of lands as chowkeedaree — affords ground for the presumption that the lands were set apart as such at the Decennial Settlement.—4 W. R. 30.

5. The *onus probandi* that the lands were the private lands of the zemindar and not set apart at the Decennial Settlement as chowkeedaree —, is on the zemindar.—*Ib.*

6. Lands granted by the Government before the Permanent Settlement as a hereditary jagheer tenure in consideration of services rendered to the Government in the repression of incursions of wild elephants upon the cultivated lands of the pergunnah, even if they are —, differ from the ordinary — contemplated by s. 41 Reg. VIII of 1793. The jagheerdars are bound, if occasion required it, to protect the pergunnah from the incursions of wild elephants, and may forfeit the tenure if they wilfully fail in the performance of that duty, but are not liable to have their lands resumed because there is no longer any occasion for the performance of the particular service.—(P. C.) 14 W. R., P. C., 28.

See Appeal 74.
Evidence (Estoppel) 135.
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Service Tenure.

Champerty.

1. The Court refused an application in a regular appeal case to substitute the name of a person to whom it was alleged that the plaintiff had assigned a share of her rights after the suit had been dismissed in the Lower Court.—2 Hay 111 (Marshall 251).

2. By the law of India an agreement in the nature of — is not illegal.—2 Hay 160 (Marshall 303).

3. The Courts will not interfere where a transfer is completed at once, *e.g.* where a party buys a share of a litigant's risk and stands or falls by his purchase.—W. R. Sp. 300 (L. R. 82).

4. It is doubtful whether, in the present state of the law in India, — can be pleaded at all.—*Ib.*

5. In the practice of the Courts of India it is lawful to assign choses in action where there is neither fraud against individuals, nor special violation of the rules of public policy.—W. R. Sp. (Act X) 127.

6. *Quære.*—Whether — or maintenance according to English law is forbidden by the law of India. If the agreement is something against good policy and justice, something tending to promote unnecessary litigation, something that in the legal sense is immoral, it cannot be supported.—(P. C.) 3 W. R., P. C., 33 (P. C. R. 395).

Although the law of — was not applicable to the Mofussil, the Courts would be exercising a very unsound discretion, and acting upon a very erroneous principle, if they were to allow a stranger to interfere in family affairs by an agreement between him and the real heirs that, if he should establish their claim, he should be entitled to a share of the estate. 9 W. R. 463, 13 W. R. 426, (P. C.) 22 W. R. 148. *See also* 9 W. R. 490, 12 W. R., O. J., 13; 22 W. R. 535; and 13, 14 *post.*

7. Where A sues in respect of his own interest for the violation of a contract made for him by B as agent only, the assignment of B's interest under the agreement in order to enable A to bring his suit, is not — or maintenance.—(P. C.) 3 W. R., P. C., 33 (P. C. R. 395).

8. Where an *ex-parte* decree for rent has been sold by the decree-holder, there is no rule of law in Bengal which forbids the assignee from carrying on the suit instead of the landlord.—5 W. R. (Act X) 52.

9. Choses in action are assignable in India, and also in England, although at law the assignee cannot sue in his own name.—9 W. R. 243. *See also* 11 W. R. 5.

10. Every purchase of a suit is not —.—*Ib.*

11. Where the purchaser of a share of land joins his vendor in a suit to recover his own property, his action is not —.—12 W. R. 133.

12. An agreement under which a Mahomedan mookhtar advances money to carry on a suit by members of a Hindoo family to set aside alienations, on the understanding that he will be entitled to a share of the property recovered, savours of —, and a suit involving such interference cannot be countenanced.—13 W. R. 426.

13. A suit cannot be maintained upon an agreement which does not operate as a transfer of the property but only as an agreement to transfer so much of it as might be recovered in a suit to be thereinafter instituted.—(P. C.) 18 W. R. 140. *See also* 22 W. R. 535.

14. Nor can the suit be maintained by reason of the nature of the transaction on which it is based, which is void as being contrary to public policy, and therefore not giving plaintiff any right to sue for the property professed to be passed.—20 W. R. 446. *See also* 22 W. R. 535, 23 W. R. 165.

15. Maintenance and — are not offences in India, and the ground on which agreements which are champertous, and agreements for maintenance, are considered void here, is because they are against public policy. Accordingly in this country no action lies against a person for maintenance.—(O. J.) 22 W. R. 138.

16. If a person who has an interest in having a question decided, puts forward another person to have it tried in a suit in that other's name, the Court has power to require the real plaintiff, though not appearing as such, to give security for the costs.—(O. J.) *ib.*

See Assignment 4, 6.
Hindoo Widow 81.
Right of Appeal 8.
Vendor and Purchaser 50.

Charge.

1. A — of assault and theft should not be dismissed for default of complainant's attendance.—1 W. R., Cr., 25. *See* 5 W. R., Cr., 51.

Nor a — of wrongful confinement under s. 347 Penal Code.—12 W. R., Cr., 27.

2. One count charging each specific offence, and describing it with a reasonable degree of certainty, is sufficient.—5 W. R., Cr., 7.

3. In a case of mischief by fire with intent to destroy a dwelling-house, the — should lay the intent as one to cause the destruction, not of a "house" simply, but of a house "used as a human dwelling."—8 W. R., Cr., 30.

4. A Sessions Judge has no power to try a prisoner who has been committed for trial on no specific —.—9 W. R., Cr., 23.

5. A criminal — properly laid should be investigated even if the case be one in which a civil action will also lie.—10 W. R., Cr., 40.

6. A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint, but may apply any section which he thinks applicable to the case, so long as the parties are not misled and the proper procedure is observed.—12 W. R., Cr., 40.

7. A Magistrate should himself state distinctly what — an accused person has to meet, and ought not to leave that to his amlah.—16 W. R., Cr., 43.

8. Where a Magistrate gives reasons for committing a case for trial in a certain way, the Sessions Judge must either accept the charges as framed, or frame others himself; but he cannot insist on a re-drawing of the — by the Magistrate, unless he specifies the — which he wishes to be sent up.—25 W. R., Cr., 17.

9. Where the — did not contain such particulars as to time and place as were reasonably sufficient to give notice

CHARGE (*continued*).

to the accused of the matter with which he was charged, the accused was acquitted.—25 W. R., Cr., 46.

See Criminal Proceedings 5, 16.
Dismissal of Complaint.
False Evidence 11, 28, 37, 49, 50.
High Court 145.
Irregularity, 4, 6, 11.
Jurisdiction 8.
Practice (Amendment) 15, 18.
,, (Criminal Trials) 53, 67.
Rioting 8.
Robbery 3.
Vendor and Purchaser 28.

Charity.

See Will 68.

Charter.

Calcutta High Court's. s. 10. *See* High Court 18.
,, s. 11. *See* ,, 154, 155.
,, s. 12. *See* Cause of Action 20.
,, ,, ,, Jurisdiction 64, 68, 73, 74, 405, 469, 512.
,, s. 13. *See* High Court 23.
,, s. 15. *See* Appeal 172.
,, ,, ,, High Court 61, 74, 89, 90, 91, 105, 122, 123, 128, 129, 173, 174.
,, ,, ,, Privy Council, 68, 87.
,, s. 16. *See* High Court 59.
,, s. 26. *See* ,, 182.
,, s. 29. *See* ,, 115.
,, s. 36. *See* ,, 48*a*, 54, 66, 72.
,, s. 39. *See* ,, 105.
,, ,, ,, Privy Council 19, 28, 46, 47, 68.
,, s. 42. *See* Privy Council 48.
,, *See* Construction 6.
,, ,, High Court 166.
N. W. P. High Court's. s. 27. *See* Practice (Review) 87.
Supreme Court's. s. 30. *See* Privy Council 59.

Charter Party.

See Freight 1, 2.

Chastity.

See Hindoo Widow 48, 92, 110.
Mahomedan Law 10.
Maintenance 24.

Cheating.

What is —.—5 W. R., Cr., 5; 18 W. R. Cr., 61; 22 W. R., Cr., 82.

See Breach of Contract 7.
Commitment 10.
Contractor 5.
Hookumnamah 1.
Jurisdiction 4, 37.
Registration 75.

Chief Commissioner.

See Construction 76.

Child.

1. In construing s. 83 Penal Code, the capacity of doing that which is wrong is not so much to be measured by years as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of notice as to justify the application of the maxim *malitia supplet ætatem.*—1 W. R., Cr., 43.

The question of capacity is rather a matter of defence than of a preliminary character, and a matter which may conveniently be considered with the other issues arising in the case.—22 W. R., Cr., 27.

2. S. 317 Penal Code contemplates cases in which the death of a — is caused from cold or some other result of exposure.—10 W. R., Cr., 52. *See also* 16 W. R., Cr., 12.

3. Religion and civil and social status of —.—*See* Minor 34.

See Evidence 59.
Husband and Wife 33, 88.
Illegitimate Child.
Maintenance 30.
Minor.
Oath or Affirmation 5, 6.

Chittagong.

See Evidence (Documentary) 72.
Pre-emption 4.
Roman Catholic 1.

Chittah.

See Ameen 17, 27.
Boundary 12.
Evidence (Documentary) 72, 73, 111.
Talook 4.

Chose in Action.

See Assignment 4.
Attachment 4.
Champerty 1, 5, 7.

Chota Nagpore.

1. Acts VIII and X of 1859 took effect in — in July and August 1859.—3 W. R. (Act X) 22.

See Appeal 95, 102, 149.
Bhoomear Tenure.
Family Custom 7.
Forfeiture 22.
Jurisdiction 210, 258.
Limitation (Act XIV of 1859) 281.
Registration 87.

Chowkeedar.

See Village Chowkeedar.

Christian.

See Armenians.
British Subject 1.
Hindoo Converts.
,, Law (Coparcenary) 22.
Illegitimate Child 1.
Marriage 34.
Minor 32.
Native Christian.
Partition 4.
Pre-emption 30.

Chupra.

See Mortgage 58.

Churs (Alluvion and Diluvion and Islands).

1. The Government declared accountable for collections made on account of certain chur lands during period of attachment following dispossession of proprietor, the Government having failed to establish claim for assessment or resumption.—W. R., F. B., 4 (1 Hay 37, Marshall 13).

2. A jotedar under Government is not entitled to a pottah from the zemindar in respect of an accretion by alluvion to a jote the rent of which is payable to Government.—W. R., F. B., 22 (1 Hay 233, Marshall 67).

3. Lands washed away and afterwards identified as re-formed on the old recognised site, are not lands "gained" within the meaning of s. 4 Reg. XI of 1825, but remain the property of the original owner.—W. R., F. B., 45 (1 Hay 284, Marshall 136); (*approved by P. C.*) 14 W. R., P. C. 11; (P. C.) 23 W. R. 8; (P. C.) 25 W. R. 242.

4. *Quære.*—To whom lands diluviated and afterwards re-formed, belong.—W. R., F. B., 129 (Sev. 88*a*).

5. In a suit to recover possession of land as an accretion, if plaintiff proves that the land is an accretion to his estate, the defendant cannot, under cls. 1 and 3 s. 4 Reg. XI of 1825, contend that the land is an island unless he can show 12 years' possession.—2 Hay 366.

6. The mere fact of land having accreted on plaintiff's side of a river, which is not found to be the boundary between plaintiff's and defendant's estates, is no *primâ facie* proof of title under Reg. XI of 1825.—2 Hay 377.

7. Lands accreting to a tenure are, under cl. 1 s. 4 Reg. XI of 1825, subject to the same liability as to rent as the original tenure itself.—2 Hay 515, 6 W. R. (Act X) 48.

8. The distinction drawn by the law of England and the Roman law between land gained by gradual accretion and that gained by the sudden advance or recession of a river, is preserved by Reg. XI of 1825.—2 Hay 541.

9. Cl. 1 s. 4 Reg. XI of 1825 applies to all cases of gradual formations of new lands, whether re-formations on old sites or not, and irrespective of any previous loss of land.—Sev. 88*g*.

11. A chur, especially one which has a river on three sides of it, is necessarily a shifting or transitory piece of property; possession is only *primâ facie* evidence of title, so long as the chur is possessed by the claimant; but if he allows the property to slip away into the possession of another party, he cannot shift the burden of proof from his own shoulders to those of the other party merely because he, the claimant, at a former period, was held to be in possession by a Court competent only to decide on the fact of possession.—Sev. 913.

12. Cl. 2 s. 4 Reg. XI of 1825 does not apply to the case of an estate entirely lost by diluvion.—W. R. Sp. 64.

13. As long as any portion of an estate is in existence, the zemindar is entitled to claim the land accreting to it as forming by law part of that estate.—*Ib.*

14. The words "at the disposal of the Government" in cl. 3 s. 4 Reg. XI of 1825 mean that the property in and absolute right of disposal of the land is invested in the Government, and not that the Government has merely a right to the revenue.—W. R. Sp. 73.

15. If a river merely changes its course, the dry bed becomes private property, the owner of which is entitled to all ponds or damoores in which water remains, and which communicates with the river only in floods; and he can claim a settlement with Government in respect of any julkur in the same.—W. R. Sp. 108.

16. Reg. XI of 1825 recognises only one mode of determining the claims of parties to accreted lands, *i.e.* to regard the land as the right of that party to whose estate it is an accretion, and not to decide and apportion the accreted land according to the extent of each party's loss by diluvion.—W. R. Sp. 149, 6 W. R. 249.

17. Government does not lose its rights to resumed lands which diluviate and re-form on the same site, nor is it obliged to institute wholly new proceedings. Diluvion does not create any new right.—W. R. Sp. 273 (L. R. 56).

18. A re-formed chur, which had formerly formed on B's estate, does not become A's by reason of the river becoming fordable between it and A's estate.—W. R. Sp. 302 (L. R. 83).

19. Land gained by the gradual recession of a river and added to A's tenure is A's property, although it has re-formed on a site formerly a part of B's. If the river flowed over the original site, and receding left the new formation and a fordable channel between it and B's property, B is entitled to retake possession.—W. R. Sp. 306 (L. R. 86).

20. The owner of land before it is inundated remains the owner of it while it is covered with water and after it becomes dry.—(P. C.) 7 W. R., P. C., 67 (P. C. R. 208). *See* 14 W. R., P. C., 11; (P.C.) 18 W. R. 4.

21. The law gives an increment to a tenant or under-tenant in possession without reference to the nature of his title.—1 W. R. 113. *See* 8 W. R. 164.

Even though he be only a tenant-at-will.—16 W. R. 95.

Held *contra* that there is no right of accretion by which a ryot can claim under the law of the country.—24 W. R. 404.

22. The holder of a lakheraj tenure may claim gradual accretions to the tenure as his property.—1 W. R. 124.

23. Accretions to an estate on one side of a river cannot be claimed as belonging to an estate on the opposite bank. —1 W. R. 173.

24. In a suit to recover possession of re-formed chur land as part of plaintiff's *kismut*, the question for consideration is, not where the land re-formed and who took possession of it, but who was the owner of the *kismut*.— 2 W. R. 10.

25. If a chur be surrounded by water fordable at any point, the owner of the land to which the chur adjoins has a *primâ facie* title to it under cl. 3 s 4. Reg. XI of 1825. The status of the land at re-survey, not on first formation is to be looked to under Act IX of 1847.—2 W. R. 34, 127. *See also* 5 W. R. 139, 9 W. R. 401. (*Over-ruled by F. B.*) 14 W. R., F. B., 25; *and see* 13 W. R. 366.

26. Claims for re-formed lands under cl. 2 s. 4 Reg. XI of 1825 are not inferior to claims for newly alluviated lands adjoining both main lands, under cls. 1 and 3 s. 4 or under s. 5.—2 W. R. 132.

27. When chur land is claimed as re-formation, independent evidence is necessary of the fact of diluviation and re-formation on the original site, and of prior occupation and right.—2 W. R. 283.

28. Mere priority of occupation of a chur does not warrant the presumption that the land which, before diluviation, was on the same site as the chur now is, belonged to A's ancestor.—2 W. R. 281.

29. The party to whose lands new formations gradually accrete, is entitled to them, though he may not have lost any lands, and though the accretion may have been caused by the washing away of the lands of another person.— 2 W. R. 295 (4 R. J. P. J. 309).

30. According to cl. 1 s. 4 Reg. XI of 1825 all gradual accessions from the recess of a river or the sea are an increment to the estate to which they are annexed without regard to the site of the increment. Mere proof of identity of site (without proof of ownership) is not sufficient to defeat the right by accretion which the law gives to an adjacent owner.—(F. B.) 3 W. R. 51 (4 R. J. P. J. 439), 6 W. R. 40, 11 W. R. 189. *See* 7 W. R. 103, 8 W. R. 164, 206; 14 W. R. 164. (*Disapproved by P. C.*) 14 W. R., P. C., 11; (P. C.) 25 W. R. 242.

31. Re-formation on an old site is not sufficient to establish a claim under Reg. XI of 1825; but re-formations are governed by cls. 1 and 3 s. 4. and a claim to hold under cl. 2 can only be maintained by the old proprietors, when the land has not been diluviated but cut off by a change of the stream.—3 W. R. 68, 5 W. R. 55. *See* 7 W. R. 103.

32. What is not a "fordable" stream within the meaning of cl. 3 s. 4 Reg. XI of 1825.—3 W. R. 94, 219; 11 W. R. 352. *See* 17 W. R. 73.

33. An accretion to a chur belongs to the owner of the chur whether the channel between the main land and the chur is fordable or not.—3 W. R. 122. *See also* 9 W. R. 401.

34. A strip of land which, in the dry season only, is left dry between the permanent bank and the river, cannot be private property until it rises beyond high-water mark, so as to become fit for cultivation; and where it does so rise, the public will be entitled to the same access to the river as before.—4 W. R. 41.

35. Right to — when vested in the owner of the bed of the river, and when in the riparian owner, according to cl. 4 or cl. 1 s. 4 Reg. XI of 1825.—4 W. R. 54. *See also* 10 W. R. 68, 11 W. R. 116, 24 W. R. 317.

36. Cl. 1 s. 4 Reg. XI of 1825 refers only to under-tenants intermediate between the zemindar and the ryot, and to

CHURS (*continued*).

khoodkhast or other ryots who possess some permanent interest in the land, and not to tenants from year to year. —4 W. R. 57.

37. Act IX of 1847 refers to re-surveys and assessments by Government as such; it does not interfere with the rights of Government as zemindar under Reg. XI of 1825. —4 W. R. 59.

It was intended to apply only to a subject which was gained from the sea or from rivers by alluvion or dereliction; not to land seemingly gained from another proprietor by the changing of a river's course.—23 W. R. 38.

38. An ijaradar is not entitled to accretions of an older date than his own farm.—4 W. R. 65.

39. Land separated from an estate by a shallow fordable stream, is not dissociated from that estate by that circumstance only, but is an accretion to the estate of the riparian proprietor, the intervening water notwithstanding.—5 W. R. 55.

40. Where the Government does not take possession of a chur, and the river between it and the shore becomes fordable, the land formed by the recess of the river is an increment to the tenure of the person holding the land most contiguous to it.—5 W. R. 283.

41. When the Government sues for alluvial land as an ordinary riparian zemindar, it is bound to prove, under cl. 3 s. 4 Reg. XI of 1825, that the stream between the chur and the mainland is fordable at some time of the year, and that it was fordable when the alluvion formed.—6 W. R. 123, 7 W. R. 513.

42. In a suit for an accretion, the onus is on plaintiff to prove title.—6 W. R. 137, 12 W. R. 252. *See also* 9 W. R. 252 (*affirmed by P. C.*) 20 W. R. 211, (P. C.) *ib.* 427.

43. Alluvial lands, when liable to enhancement at the neighbouring rates, are entitled to deduction for collection charges and talookdaree profits.—6 W. R. (Act X) 48.

44. Extent to which they are liable to enhancement.—6 W. R. (Act X) 85.

45. An *amulnamah* providing that the cultivator of *chur* land should pay no rent at first, and then a low rate gradually increasing to a certain rate for the duration of which no period is fixed, is no bar to enhancement.—7 W. R. 158.

46. In a suit to set aside a survey award declaring the extent of the plaintiff's and the opposite party's respective titles to certain *chur* lands, the opposite party has no right to sue for rent on the plea of joint possession before fixing what lands are to be appropriated by him, and what by the intervenor, according to the terms of the survey award. —7 W. R. 103.

47. When plaintiff alleges that his and the defendant's villages were washed away, and have re-formed on the same site, and no third party claims the new formation as an increment to his estate, the question of title will have to be determined by cl. 5 s. 4 Reg. XI of 1825.—8 W. R. 287.

48. In a suit for a kuboolcut on an alleged right to assess lands which have accreted to a permanent *zimma* tenure, the *onus* is on plaintiff to prove that, under cl. 1 s. 4 Reg. XI of 1825, the accretions are either by custom or agreement liable to assessment.—8 W. R. 427, 9 W. R. 379.

49. Where a permanent *zimma* tenure has been held at one rate of rent for more than 20 years, there can be no assessment of accretions either under s. 15 Act X of 1859 or s. 51 Reg. VIII of 1793.—*Ib.*

50. Under Reg. XI of 1825, a right of property in land gained by alluvion from a river (the bed of which is not the property of an individual) is acquired in two modes. (1) Where the land is gained by gradual accession by the recess of the river, in which case it becomes the property of the person in possession of the estate to which the land is an increment, and (2) when a chur or island is thrown up in a large navigable river, and the channel between such chur or island is fordable at any season of the year, the accession is an accession to the land or tenure most contiguous. The ownership of the old site does not give a title to re-formation.—(F. B.) 9 W. R. 312. *See* 12 W. R. 252 and 14 W. R., F. B., 25; 21 W. R. 115; 22 W. R. 230.

51. Land cannot be legally proved to be an accretion to a talook where there is an unfordable stream between it and the talook, nor can possession under such circumstances give right to a declaration of title.—10 W. R. 272.

52. Where, in a suit by a zemindar for rent on account of newly-formed land which had accreted to the old jote, the Civil Court has decreed the rent, no notice under s. 113 Act X, containing the ground for enhancement as prescribed by s. 17, is necessary before rent can be demanded.—10 W. R. 330.

53. Nor can any intervention by a third party be allowed in such a case.—*Ib.*

54. In a suit to recover possession of alluvial land in the enjoyment of innocent purchasers for value without notice, plaintiff must give strict legal proof of title to the land as alluvial, and show the nature of the original formation of the chur, where it first appeared, and to what it adhered.—(P. C.) 11 W. R., P. C., 2. *See* (P. C.) 18 W. R. 4.

55. Where plaintiff went to trial below, alleging that the land claimed was attached to his estate as alluvial, he was not allowed in appeal before the Privy Council to raise a different case—one simply of original ownership of the site of the lands re-formed.—(P. C.) *ib.*

56. So also where, in a suit for recovery of possession of alluvial lands, the only point raised by the defendant in the Courts below was as to the identity of the land, *i.e.* whether they were included in certain resumption proceedings as appertaining to plaintiff's estate, it was held that the defendant could not in appeal before the Privy Council raise the question as to whether the lands had been improperly resumed by Government with those whom the plaintiff now represents.—(P. C.) 11 W. R., P. C., 27.

57. The custom to be established under s. 2 Reg. XI of 1825, as to the disjunction and junction of alluvial land by the encroachment or recess of a river, must be a local custom; *Canoongoe* papers are not sufficient to prove the existence of such custom.—(P. C.) 11 W. R., P. C., 42.

58. The Government having a right to revenue, but not to actual possession, can have no *locus standi* in a suit to set aside judgments in suits to which it was no party, for the possession of lands formed by accretion.—12 W. R. 204.

59. Where the right of a proprietor is recognised to a settlement of a chur contiguous to his estate, the Government cannot claim the chur as an island under cl. 3 s. 4 Reg. XI of 1825.—*Ib.*

60. In a suit for alluvial land claimed by right of accretion under Reg. XI of 1825, there must be a clear finding as to whether the land is a re-formation on the original site of diluviated lands of plaintiff's estate or an accretion by recession of the river.—12 W. R. 229, 409.

61. A question as to the right to the possession of land either gained by gradual accession or re-formation or thrown up in a river or the sea, must be determined by an enquiry into the condition of the land when it was originally gained by alluvion or thrown up, and became the subject of property and capable of cultivation or occupation as such. If it becomes the subject of property as an island in a navigable river, the fact that the channel between it and the main land dries up subsequently cannot destroy rights of property or possession which any person may have acquired in it while it continued to be an island. His possession is good, and constitutes a right against all persons except the Government.—13 W. R. 366.

62. Plaintiff sued for the recovery of alluvial lands which originally formed a portion of his estate, which had been washed away by the Ganges, but which subsequently re-formed. The defendants relied on s. 4 Reg. XI of 1825, and contended that the plaintiff's land having been wholly submerged so as to make the defendants' land the river boundary, the subsequent recession of the river caused a gradual accession to their land, and an increment by annexation to their estate, notwithstanding that the land has been re-formed in the ascertainable and ascertained site of the plaintiff's mouzah. *Held* that s. 4 did not apply to this case, and that it refers only to cases of gain by acquisition by means of gradual accession, *i.e.* to the gain which an individual proprietor might make for what was part of the public territory, and not from a private person's property.—(P. C.) 14 W. R., P. C., 11. *See also* 14 W. R. 424; 15 W. R. 461; 16 W. R., P. C., 5; 16 W. R. 95, 109; (P. C.) 18 W. R. 113; 22 W. R. 238, 324; 23 W. R. 113; 24 W. R. 91. *See* 19 W. R. 89; 20 W. R. 117; 21 W. R. 115.

63. Where a suit for possession of alluvial land was decreed on the ground that, having formed opposite to plaintiff's villages, the land subsequently became contiguous thereto,—*Held* that the decision was not in con

Churs (*continued*).

formity with cl. 1 or cl. 3 s. 4 Reg. XI of 1825, and that it was necessary to determine how the land formed, whether it was thrown up as an island in the bed of the river, or was formed by gradual accretion to an estate; and if the latter, to what lands it so accreted.—14 W. R. 254.

64. Before cl. 4 s. 4 Reg. XI of 1825 can operate to deprive a party of the title given by cl. 1, the opposite party must prove that the land in question was the bed of a small and shallow river which, with the julkur right of fishing over it, was recognised as the property of such opposite party.—14 W. R. 268.

65. So long as the bed of a navigable river is washed by the ordinary flow of the tide at a season when the river is not flooded, it remains *publici juris*, and is not subject to private rights of ownership; if vested in any one, it is vested in the Crown, not under Reg. XI of 1825, or for mere fiscal purposes, but as representing, and as it were a trustee for, the public.—14 W. R. 352.

The bank of a river is not regarded by the law as public property; it may be, and constantly is, private property, though there may be public rights of passage over it for the purposes of navigation.—22 W. R. 276.

66. Where lands become annexed to a jote by gradual accretion within the meaning of cl. 1 s. 4 Reg. XI of 1825, the jotedar is entitled to hold them upon the same principle and under the same legal conditions as he holds the parent estate.—15 W. R. 87, 149.

67. The words "a large navigable river" in cl. 3 s. 4 Reg. XI of 1825 are not applicable to the Goomtee, but to such rivers as the Ganges and the Megna, upon which navigation can always be carried on.—17 W. R. 73.

68. In a suit regarding a chur, the survey having been made when neither of the parties held any right in the land, and when both their villages belonged to the same proprietor, was held to be some evidence of possession at that time not only of the julkur, but of the right of property in the river, and possession under those circumstances to be some evidence of title.—*Ib.*

69. The Government, when it holds a resumed mehal as its *khas* property, holds it as, and with all the rights and liabilities of, a private zemindar, and is therefore entitled, under Reg. XI of 1825, to claim accretions to the *khas* estate.—17 W. R. 163.

70. The evidence of Government having sent its officers to measure the land and to surround it with pillars, is the very best evidence of possession of a lately formed chur.—17 W. R. 195.

71. The presumption that usually arises against those who slumber on their rights is the stronger when the subject-matter, as in the case of —, is in a constant state of change, and the difficulty of proof increased by lapse of time.—(P. C.) 18 W. R. 4.

72. Land which upon inspection of the survey map appears to have been added to an estate, although it may be a re-formation upon the old site, is liable to assessment under s. 6 Act IX of 1847, and no suit will lie against the orders of the Board of Revenue in such a matter.—18 W. R. 64, 19 W. R. 127.

But the proprietor from whom the land was gained has a right of suit to recover his property from those who are keeping it from him.—23 W. R. 38.

73. In a suit for a portion of chur land thrown up by a tidal and navigable river, the appellants, who sought to disturb a possession of nearly 7 years' duration, and proved the land to be a re-formation on a site identical with lands originally included in their zemindarees and afterwards swept away, were held to have a better title to it than the respondents, who claimed it as an accretion to their settled chur, but failed to prove that it was such a gradual and imperceptible accretion as the Civil Law contemplates.—(P. C.) 18 W. R. 113. *See* 22 W. R. 238.

74. Review of the law of alluvion in Bengal, as declared by Reg. XI of 1825 and decided cases.—(P. C.) *Ib.*

74*a*. A title founded on the original ownership and identification of site is to be confined *primâ facie* to the re-formation on that site.—(P. C.) *Ib.* *See also* 21 W. R. 446.

75. The custom which plaintiff was required to establish in order to disturb defendant's long uninterrupted possession of land, once alluvial, lying between two branches of a river, or between two rivers, the volume of water in which from time to time shifted, so that alternately one of those channels was deep and the other fordable, was, that the ownership and right of possession of the intermediate tract shifted with the volume of the water always attaching to the riparian proprietor on the side of the channel which happened to be fordable.—(P. C.) 18 W. R. 160.

76. It is not in the power of a former zemindar to impress upon the land a *quasi* servitude, or to burden it with a covenant which will run with it into the hands of any possessor of it by any title; and consequently a contract between two former zemindars that the ownership and right of possession of the land should shift in the manner above mentioned was held not binding upon the defendant who derived his title from a person who was a stranger to the arrangement.—(P. C.) *Ib.*

77. Where a flowing stream dried up, and defendants acquired a right to the land by the law of accretion, that right was held subject to the exercise by plaintiffs of their prior right of fishery.—18 W. R. 460.

77*a*. The purchaser of an estate found by actual measurement the year before to consist of a certain number of beegahs with a specified rental, can have no claim to re-formations of land belonging to the mehal as it originally stood.—19 W. R. 89. *See* 21 W. R. 115.

So also in a case brought against the Government instead of the adjacent proprietors.—24 W. R. 91.

78. In a suit to recover a tract of chur land of which he had been ordered by the Magistrate to be put in possession according to certain boundaries, the plaintiff was held to have failed in sustaining the burden of proof that the land he now claimed was identical with that of which he was put into possession by the Magistrate's order.—(P. C.) 19 W. R. 114.

79. An estate does not necessarily mean land, but may denote julkur, phulkur, or bunkur rights; and even where land has been entirely washed away, there still remains the right to possession of any alluvion that may subsequently re-appear on the same site, which right may be sold as an estate.—20 W. R. 117.

80. Though an island, or land thrown up and surrounded by a river, may become vested in Government under the powers of cl. 4 s. 4 Reg. XI of 1825, it does not follow that, if the river which separates the island from the main land dries up after the island has been resumed by Government, the bed of the river becomes the property of Government in cases in which the bed of the river is not gained as an accretion to the island by gradual accession within the meaning of cl. 1.—(P. C.) 20 W. R. 276.

81. In a dispute between the zemindars of Sohagpore and Doomree relative to certain chur land,—*Held* that the proper issues to be tried were (1) whether the land had been settled in 1837 with the maliks of Sohagpore as proprietors of alluvium which had gradually accreted to their estate, or upon what other grounds such settlement was made,—the *onus* of proving gradual accretion being on the plaintiffs; and (2) whether there was at the permanent settlement, and has been since, a clear and definite usage that the channel of the Gunduck should be the boundary of the zemindarees,—the burden of proving the affirmative of this being on the defendant.—(P. C.) 20 W. R. 427.

82. Where a mehal which has been diminished by diluvion is sold at auction by the Collector who apprises the public of the existing area, his specification of such area in no way limits the certificate of sale, or restricts the right of the purchaser from claiming thereafter any accretion to the estate; the increment being always a contingent right of the zemindar. The party taking the settlement was entitled to all the rights of the Government, including the re-formed lands.—21 W. R. 115, 22 W. R. 230. *See also* 24 W. R. 91.

83. A party failing to prove a title by original ownership of site cannot be allowed to fall back upon a title by ownership for twelve years.—22 W. R. 238.

84. S. 9 Act IX of 1847 forbids a suit against Government or its officers for damages on account of anything done in good faith in the exercise of the powers conferred by this Act; but not a suit to recover property which either Government or its officers may be keeping away from its rightful owner.—23 W. R. 38.

85. In a suit for possession of — lands as re-formations

Churs (*continued*).

on the original site of plaintiff's or his vendor's lands or accretions thereto, where limitation is pleaded by defendant in adverse possession, the *onus* lies on plaintiff to prove that, before disappearance or diluvion, the land in dispute was in the possession of his vendor.—23 W. R. 443.

86. Where some lands lying between an estate and a river were sold, and no rights were reserved by the owners of the estate in some other land which had formerly existed in the bed of the river, but had become submerged,—*Held* that all fresh accretions to the land would belong to the purchasers of that land and not to the original owners, but that a finding on this point was one of fact on which no special appeal would lie.—25 W. R. 390.

See Abatement 2, 8, 10, 11, 16, 20, 33.
Auction-Purchaser (Revenue Sale) 8.
Enhancement 228.
Evidence (Estoppel) 40.
,, (Presumptions) 18.
Indigo 13.
Julkur 7.
Jurisdiction 308, 429.
Landmarks 1.
Limitation 141, 142, 198.
,, (Act XIII of 1848) 20.
Mesne Profits 51, 52.
Mortgage 271.
Occupancy 10, 12.
Practice (Possession) 91.
Res Judicata 84.
Settlement 3, 20.
Splitting Cause of Action 11.
Water 3, 7.

Civil Procedure Code.

The only enactments in relation to Civil Procedure now in force, besides Act VIII of 1859 and the Acts modifying such Act, are Act XVII of 1852 and a part of Act VI of 1854.—1 Hyde 136.

See Act VIII of 1859.
Act XXIII of 1861.

Code.

See Civil Procedure Code.
Criminal Procedure Code.
Penal Code.

Co-Defendants.

1. Where a decree is obtainable against only one of two —.—W. R., F. B., 58; 22 W. R. 290.

2. A Court, in dismissing a suit, cannot adjudicate on the rival claims of two —.—1 W. R. 12, 51.

3. A direct issue between two — is contrary to practice. —2 W. R. 45. *See also* 11 W. R. 462.

See Appeal 11, 34, 35, 126.
Costs 1, 4, 5, 15, 20, 34, 40, 61, 62, 68.
Evidence (Estoppel) 17, 25, 38.
,, (Oral) 40.
Joinder of Parties 5, 6, 16, 18, 20, 23, 24, 26, 27, 33, 34, 35.
Objection (under s. 348 Act VIII of 1859) 6.
Practice (Appeal) 5, 6, 23, 41, 51, 68,
,, (Execution of Decree) 98.
,, (Suit) 14, 62.
Res Judicata 83.
Special Appeal 49, 117.

Co-Heirs.

See Administration 3.
Limitation 105.
Res Judicata 10.
Sale 200.

Coin.

Nature of proof required for conviction of counterfeiting —.—23 W. R., Cr., 4.

Collection Charges.

See Mesne Profits 12.

Collusive Decree.

1. Where G, by means of a — against J, appropriated certain assets belonging to J and thereby prevented J from obtaining satisfaction of his decree against J, it was held that, if G had subsequently returned to J the money collusively acquired by him and held J's receipt and *ekrar* to hold him harmless, he had an action against J but could not seek exemption from J's claim which had been brought about by his fraudulent conduct.—1 Hay 50.

2. A Court may try the issue of fraud under s. 272 Act VIII in the absence of any charge of fraud against the decree appealed from.—2 W. R., Mis., 29.

3. Under s. 272, direct application to stay proceedings should in the first instance be made to the Court which gave the decree.—11 W. R. 97.

4. An error in suing the representatives or heirs of the deceased obligor is not obtaining a decree by "improper means" within the meaning of s. 272.—14 W. R. 363.

See Attached Property 46.
Attachment 11.
Costs 14.
Decree 25.
Ejectment 51.
Fraud 15.
Jurisdiction 238.
Landlord and Tenant 20.
Limitation (Act XIV of 1859) 161.
Minors 6.
Mortgage 115.
Onus Probandi 184, 168, 192, 264.

Commission.

See Local Investigation.
Practice (Commissions).

Commission Agent.

See Jurisdiction 283.
Limitation (Act XIV of 1859) 329.

Commitment.

1. It is not illegal for a Magistrate to commit an accused person to the sessions without examining him or his witnesses.—2 W. R., Cr., 50 (4 R. J. P. J. 357).

2. A Magistrate making an enquiry with a view to —, is bound to record specially the evidence on which the — is made.—2 W. R., Cr., 65 (4 R. J. P. J. 565).

3. A Sessions Judge cannot alter a — in a case which falls within the cognizance of a Magistrate.—5 W. R., Cr., 12; 10 W. R., Cr., 35.

4. As to the power of a Sessions Judge, under s. 435 Act XXV of 1861, to order — of a prisoner discharged by the Magistrate.—7 W. R., Cr., 38. *See also* 8 W. R., Cr., 41; 10 W. R., Cr., 25; 12 W. R., Cr., 46; 18 W. R., Cr., 39.

So also under s. 296 Act X of 1872.—19 W. R., Cr., 30; 21 W. R., Cr., 41; 22 W. R., Cr., 67; 24 W. R., Cr., 70.

5. A Magistrate to whom a case of false evidence is referred cannot, under ss. 194 and 226 Act XXV of 1861, commit the accused without himself examining the com-

COMMITMENT (*continued*).

plainant and his witnesses and recording the evidence so given.—11 W. R., Cr., 22.

6. Before committing an accused person to jail other than for mere temporary custody, the Magistrate must be satisfied on evidence that some case is made out against the accused, or that there are reasonable grounds for believing him guilty of the offence imputed to him.—13 W. R., Cr., 1.

7. The fact of a — being made by a Joint Magistrate who is an officer exercising the powers of a Magistrate, is sufficient, under s. 359 Act XXV of 1861, to enable the Sessions Judge to proceed with the trial; and it lies with the party impugning the correctness of the proceedings to show that there was no jurisdiction.—13 W. R., Cr., 17.

8. The — of certain persons charged, under s. 193 Penal Code, with intentionally giving false evidence was held illegal because the sanction of neither the Court before or against which the offence was committed, or of some other Court to which such Court is subordinate, was given.—18 W. R., Cr., 32.

9. A — for the same offence and under the same section by the Sessions Judge was quashed, because, according to s. 472 Act X of 1872, the offence is not one triable exclusively by the Sessions Court.—21 W. R., Cr., 37.

10. A trial for the offence of cheating is not a Sessions case in which, under s. 296 Act X of 1872, the Court of Sessions may order a —.—21 W. R., Cr., 41.

11. The — of a soldier by the Magistrate of Hazareebaugh was not quashed as contrary to Reg. XX of 1825, that Regulation having no force in Hazareebaugh.—22 W. R., Cr., 20.

12. A — was declared illegal on the ground that, though it was practicable to procure the attendance of the witnesses against the accused after his arrest, they were not procured and examined in his presence as required by s. 327 Act X of 1872.—22 W. R., Cr., 33.

See Amends 7.
Charge 4.
Compromise 10.
Criminal Proceedings 7, 14, 16.
Discharge 1, 4.
Escape 2.
Evidence 49.
False Evidence 7, 14, 27, 38, 39, 45.
Forgery 7, 18.
High Court 15.
Irregularity 18.
Jurisdiction 315, 386, 403.
Lunatic 12.
Pardon 5.
Practice (Criminal Trials) 25, 27, 40.
Rioting 8.
Slave 1.
State Offences 8.

Commons

See Limitation 223.

Company.

See Joint Stock Company.

Compensation.

See Account 11.
Amends.
Co-sharers 64.
Land taken for Public Purposes 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20, 21, 22, 23, 24, 25, 26.
Partnership 80.
Right to Light and Air 2.

Compounding.

1. A contract — an assault is not illegal and may be sued on. The fact of two of the defendants being Mahomedans does not affect the principle of this decision.—5 W. R., S. C. C., 16.

2. A contract — a charge of wrongful restraint, not allowed to be withdrawn by the Magistrate who punished the accused criminally, is not illegal and may be sued on with reference to the exception to s. 214 Penal Code.—7 W. R. 33.

3. The offence of kidnapping can be compounded under s. 214 Penal Code.—22 W. R., Cr., 26.

See Compromise 15.
Criminal Proceedings 15.
Sale 119.
Specific Performance 6.

Compromise.

1. Defendant's ancestor and two other persons, who were executors of the will of A, were sued in a former action by the heirs of A for waste committed to his estate. While that case was pending in appeal, plaintiff's heirs under the will entered into a —, in regard to the personal property, with the defendants in the present case, releasing their ancestor from liability. Plaintiff now sued as trustee to set aside the deed of — as collusive and executed without authority. *Held*, in appeal, that the parties who executed the — had a perfect right to relinquish their own claims as against the defendant's executors; that there was no evidence of any intention, in those who entered into the —, to over-ride the will; and that the — was perfectly legal and lay under no suspicion of collusion.—1 Hay 17.

2. The mere production of a — is not conclusive evidence of fulfilment of the terms of it, or that it was executed by plaintiff and delivered to defendant.—2 Hay 497.

3. Where no ground was shown for a — entered into by a guardian on behalf of a minor, the Court presumed that the guardian acted collusively in abandoning the minor's claim, and set aside the —.—2 Hay 499. *See also* 6 W. R. 16.

4. Infants are not bound by a — concluded by their guardian if it be prejudicial to their interests and not ratified by them on their attaining majority; and it is no ratification and acquiescence on the part of the infants after attaining their majority if they rely upon the — in answer to a suit brought against them by the person with whom that — was concluded.—2 Hay 619.

5. A mother, as a guardian, has no power to make a — on behalf of a minor daughter, unless it is beneficial to the daughter's interests.—W. R. Sp. 83.

6. When a case is remanded to a Lower Court with various directions, and the parties enter into a —, the Lower Court should simply dispose of it in accordance with the terms of —.—W. R. Sp. 146.

7. A defendant cannot fall back on a deed of — conceding a portion of plaintiff's claim after he has contested the whole case on its merits.—W. R. Sp. 211.

8. A *farigh-khutti* or relinquishment of the claim made in a suit, and an *ikrarnamah* or engagement to deliver in a *razeenamah* or deed in acknowledgment of satisfaction, contemporaneously executed by the plaintiff *pendente lite* in consideration of 2000Rs., were held to amount to an agreement for the settlement of the action.—(P. C.) 7 W. R., P. C., 29 (P. C. R. 166).

9. Not annulled by non-performance, but may be enforced by suit.—1 W. R. 265, 2 W. R. 209.

10. After committal, — inadmissible.—2 W. R., Cr., 57 (1 R. J. P. J. 365).

11. A deed of — settling disputes between the members of a joint Hindoo family does not become inoperative on the separation of the family.—3 W. R. 135.

12. The validity of a — effected by the natural guardian of an expectant heir during his minority, by which immediate possession of half the property was obtained on the surrender of all claim to the reversion of the other half, was held to depend on whether the transaction was at the time one reasonably beneficial to the minor.—4 W. R. 71.

13. A decree in accordance with a *solehnamah* or —, though the latter contains no provision for the issue of

COMPROMISE (*continued*).

execution in case of default, may, like all decrees, be enforced by execution.—4 W. R., S. C. C., 7. *See* 15 W. R. 65.

14. Where a Magistrate admits a — not legally admissible, and the parties act in good faith, the error of the Magistrate cannot affect the position of the parties.—8 W. R. 412.

15. The parties to a — are bound by its terms admitting another's title to the land in dispute, even if their own title to it has accrued since the —.—12 W. R. 427.

16. It is not in the power of either of the parties to fall back upon a decree the effect of which has been nullified by a —.—14 W. R. 146.

17. Pending an appeal to the Sudder Court, both parties agreed provisionally to take possession of certain portions of the land in dispute, with liberty to either party, within 12 months from the date of the agreement, to apply to the proper tribunal to effect a rectification in the quantity of land which each was to hold permanently. The local Judge, to whom application was accordingly made by one of the parties, having refused to entertain it on the ground that the appeal was still before the Sudder Court, — *Held*, that the local Judge should either have entertained the application as an original suit, or have retained it pending an application to the Sudder Court to give effect to the agreement as a —.—(P. C.) 15 W. R., P. C., 38.

18. The right to mesne profits on account of additional land awarded to one of the parties as the result of the final rectification effected under the above arrangement, followed as a matter of course, and limitation began to run from the time when the rightful partition was completed.—(P. C.) *ib.*

19. Though no right or title can be decided adversely to a defendant on the basis of a *solehnameh* to which he was not a party, it would yet be evidence that by an order passed in it plaintiff was put in possession.—15 W. R. 261.

20. A — of a suit should be carried out by proper deeds and be filed in Court, particularly where infants are concerned.—(P. C.) 16 W. R., P. C., 22.

21. A *solehnameh* was considered admissible as evidence against plaintiff because, though not a party to it himself, his maternal uncles through whom he claimed were parties to it.—17 W. R. 521.

22. When, by a *solehnameh* entered into about one hundred years ago between plaintiff's and defendant's predecessors, the collection of certain tolls and cesses was reserved to the zemindar (plaintiff), and certain julkur rights to the ijaradars (defendants),—*Held*, that the re-building of a *khuttees* or fish-market or exchange by the plaintiff upon his own land (the former one having been destroyed during his minority) was not in excess of his rights or in contravention of the *ruffanamah*; and though the *khuttees* would divert profit from the defendants to the plaintiff, yet the loss was a *damnum absque injuriâ*.—18 W. R. 142.

23. Where a decree-holder enters into a *solehnameh* under which the judgment-debtor arranges to pay a certain sum and makes other conditions, the decree gives place to this — which can only be enforced by a fresh suit within the period of limitation.—18 W. R. 279.

24. Where a deed of — between plaintiffs and defendants stipulated for the payment by the latter to the zemindar of a certain sum as rent and that in default they would have no right to the lands specified,—*Held* that, as what the defendants had to do was of a perpetually recurring nature, and the Court could not preserve the plaintiffs from being sued by the zemindar, the intention of the deed was that its terms should be strictly enforced.—19 W. R. 434.

25. Where A entered into an agreement with B not to — a case with C because he had assigned the benefit of the suit to B as a security for the due payment of some monthly instalment of money, and A notwithstanding did afterwards — the suit with C.—*Held* that A could not be convicted under s. 422 Penal Code unless the — with C was made dishonestly or fraudulently towards B.—22 W. R., Cr., 16.

See Appeal 162.
Arbitration 79, 89.
Cause of Action 22.
Compounding.
Evidence 91.
" (Estoppel) 42, 50, 85, 94.
Ex-parte Judgment or Decree 24.
Forgery 25.
Fraud 5.
High Court 173.
Hindoo Law (Religious Ceremonies) 11.
" Widow 75, 89.
Husband and Wife 6.
Indigo 18.
Joint Stock Company 4.
Jurisdiction 254.
Lease 70.
Limitation 70, 132
" (Act XIII of 1848) 9.
" (Act XIV of 1859) 85, 282.
Lunatic 5.
Mesne Profits 13, 60.
Mokurruree Tenure 27.
Mortgage 77.
Onus Probandi 103, 225, 227.
Partition 3, 4, 13*a*, 16.
" (Butwarra) 6.
Practice (Execution of Decree) 117, 178, 184.
" (Review) 33.
Refund 6.
Registration 152.
Reversioner 5.
Sale 117.
Set-off 13.
Special Appeal 101.
Specific Performance 2.
Stamp Duty 5, 7, 15, 48.
Survey 9.

Conditional Sale.

See Bond 3.
Evidence 7.
" (Oral) 7, 19.
Hindoo Widow 17.
Money Decree 14.
Mortgage 25, 28, 29, 41, 79, 91, 163, 167, 198, 234, 257.
Pre-emption 20, 21.
Sale 62.

Confession.

See Abatement 14.
Accused 1, 2, 4, 5, 6.
Confession of Judgment.
Deputy Magistrate 3.
Evidence (Admissions and Statements) 14, 15, 16, 19, 20, 23, 26, 29, 30, 34, 37, 48, 50, 53, 54, 55.
" (Corroborative) 4, 8.
Hurt 6, 7, 8.
Jury 12.
Murder 2, 6, 21.

Confession of Judgment.

A plaintiff is entitled to a decree as of the date on which the defendant appeared and confessed judgment.—12 W. R. 432.

See Small Cause Court 38.

Confiscation.

The — of property within his own territories by the Chief of an Independent State must be respected by the

CONFISCATION (*continued*).

English Courts. The fact, if disputed, must be ascertained as any other fact in issue between the parties.—14 W. R. 218.

See Escheat.
Forfeiture.
High Court 32.
Hindoo Law (Coparcenary) 102.
Jurisdiction 453.
Limitation 48, 67.
Mokurruree Tenure 4.
Practice (Attachment) 54.
Salt 1, 2.
Stolen Property 6.
Summary Trial 4.
Timber 6.

Conjugal Rights.

See Husband and Wife 2, 5, 10, 13, 14, 16, 24, 29, 33, 38.
Maintenance 28, 29.
Marriage 39.

Consent.

See Adjustment 4.
Adultery 6.
Ancestral Property 11, 12, 15, 17.
Arbitration 2, 8, 9, 14, 15, 22, 36, 83.
Attorney and Client 7.
Bill of Exchange 7.
Cause of Action 4.
Contempt of Lawful Authority of Public Servant 3.
Conveyance 15.
Co-sharers 30, 31*a*, 37, 38, 43, 51, 57.
Costs 73.
Court of Wards 1.
Criminal Proceedings 22.
Debtor and Creditor 7.
Decree 1, 5.
Defamation 12.
Dower 1.
Ejectment 97.
Endowment 56.
Enhancement 149, 274.
Evidence (Estoppel) 12, 39.
,, (Presumptions) 10.
Fresh Suit 6.
Ghatwals 6, 28.
Gift 23, 26, 33, 45.
Hindoo Law 3.
,, ,, (Adoption) 10, 12, 21, 37, 44, 47, 50, 65.
,, ,, (Alienation) 13, 16, 17, 24, 28.
,, ,, (Coparcenary) 30, 55, 65, 78.
,, ,, (Sale) 3, 7, 15, 16.
,, Widow 19.
Husband and Wife 3, 25, 44.
Joinder of Parties 30, 34.
Joint Stock Company 6.
Jurisdiction 20, 148, 461, 512.
Kidnapping 1, 2, 3.
King of Oude 1, 2.
Landlord and Tenant 14, 52.
Lease 71.
Limitation 210, 223, 227.
,, (Act XIV of 1859) 253
See Limitation (Act IX of 1871) 5, 22.
Lunatic 26.
Mahomedan Law 5, 36.
Marriage 14, 31, 39.
Minor 31.
Mortgage 266.
Murder 18, 29.
Occupancy 46, 79, 84.
Onus Probandi 59.
Partition 14.
Practice (Appeal) 84.
,, (Attachment) 23.
,, (Commissions) 21.
,, (Execution of Decree) 63, 109, 268.
,, (Parties) 30, 35, 39.
,, (Suit) 15, 55, 56.
Principal and Agent 16, 49.
,, ,, Surety 5, 8, 18, 30.
Privy Council 10.
Putnee Talook 68, 76, 85.
Rape 1, 2.
Registration 124.
Rent 83, 99, 115, 116.
Reversioner 16.
Right of Public 1.
,, Way 14.
Sale 40, 189, 224.
Special Appeal 18, 80.
Stamp Duty 65.
Sub-lease 6.
Surburakaree Tenure 1.
Transferable Tenure 6.
Vendor and Purchaser 33, 61.
Water-course 2.
Will 17, 27, 35, 51, 69.
Withdrawal of Suit or Appeal 7.
Witness 18.
Zemindar 2.

Consignment.

See Carrier.

Consolidation of Cases.

See Analogous Cases.
Practice (Suit) 55.

Construction.

1. Mode of — with regard to deeds of gift. —W. R., F. B., 112.

2. Of the words "time of passing of the Act" in Act X of 1859. —(F. B.) W. R., F. B., 126.

3. Mode of construing a plaint. —*See* Plaint 7.

4. Of "*dena pawna*" in assignment of Indigo factory. —(F. B.) W. R., F. B., 167.

5. Of "substantial witnesses" and "residing in the neighbourhood" in cl. 2. s. 8. Reg. VIII of 1819.—W. R. Sp. 381 (L. R. 155), 2 W. R. 188 (*modified by P. C.*) 23 W. R. 113.

6. The term "within the limits of the Charter of the said United Company" in 9 Geo. IV. c. 74 s. 56, construed to mean within the limits of the Trading Charter of the E. I. Co.—(P. C.) 4 W. R., P. C., 109 (P. C. R. 285).

7. The meaning of an Act is to be gathered solely by reference to the Act itself, without looking into external sources of evidence for the purpose of ascertaining what was or was not the intention of the Legislature.—1 Hyde 100; (P. C.) 8 W. R., P. C., 3; 13 W. R. 85; 20 W. R. 78.

In interpreting an Act of the Legislature, the Court must not take one section only and see what its meaning is, but must take all the sections which relate to the same subject-matter, and look at the Act as a whole and see what was the intention. —23 W. R. 171.

CONSTRUCTION (*continued*).

8. A decree in the nature of penal damages should be construed strictly and literally, and enforced only against the persons at whose application and instance the act complained of took place.—2 W. R., Mis., 55.

9. Of "*mokurruree istemraree.*"—*See* Mokururee Tenure 13.

10. Of a "fordable" stream.—*See* Churs 32.

11. Of "a subsisting lakheraj tenure."—*See* Lakheraj 24.

12. Of "Revenue Office of the District or Sub-Division" in s. 162 Act X.—*See* Practice (Suit) 16.

13. Of "fair and equitable" in s. 5 Act X.—*See* Enhancement 142.

" " in s. 5 Act VIII of 1869 (B. C.).—*See* Occupancy 95.

14. Of "*ticca mohto.*"—*See* Mourosee 1.

15. Of "articles sold by retail" in cl. 8 s. 1 Act XIV of 1859.—*See* Limitation (Act XIV of 1859) 78.

16. Of "decision or order" in s. 27 Act XXIII of 1861. —*See* Small Cause Court 19.

17. Of "decision" in proviso to s. 77 Act X.—*See* Dismissal of Suit or Appeal 5.

" " in s. 167 Act I of 1872.—(O. J.) 25 W. R. Cr., 36.

18. The officer passing a decree is the most suitable person to construe it afterwards, should any doubt arise as to its meaning. Thus, where a suit was for *nizamut* lands, and the claim was decreed according to the plaint, *nizamut* was construed to mean *mokudumee*.—4 W. R., Mis., 13.

19. Of "*istemraree.*"—*See* Istemraree.

20. Of "*angoja sontan.*"—*See* Gift 37.

21. The interpretation put by a Judge in execution of a decree on its terms is final until it is modified or reversed in review. A new suit will not lie to obtain a different interpretation.—5 W. R. 202.

22. Of "*bonâ fide* purchaser."—*See* Limitation (Act XIV of 1859) 103, 277.

22*a*. The legal meaning of "*bonâ fide*" is with due care and after due enquiry.—11 W. R. 389.

23. Of "*good* ground of appeal" in Rule dated 10 May, 1866.—*See* Special Appeal 54.

24. Of "share."—*See* Sale Law (Act XI. of 1859) 1.

25. Of "Collector" in s. 140 Act X.—*See* Limitation (Act X of 1859) 32.

26. Of "judgment" in s. 15 of High Courts Charter.—*See* High Court 90, 122, 123.

" " in s. 20 Act XIV.—*See* Limitation (Act XIV of 1859) 137, 236.

" " in s. 105 Act VIII.—*See* Husband and Wife, 22.

27. Of "actual receipt and enjoyment" in s. 77 Act X. —*See* Intervenor 45.

28. Of "proprietor" in s. 3, Reg. XXVI of 1793.—*See* Majority 7.

29. The word "*sontan*" occurring in a deed of agreement between members of a Hindoo family was construed to mean issue generally and not male issue merely.—7 W. R. 320, 21 W. R. 268.

30. Of "dwell," "business," "servant or agent," and "lodging" in s. 8 Act XI of 1865.—*See* Jurisdiction 13, 259, 458.

Of "dwell or carry on business or personally work for gain" in s. 12 of High Court's Charter.—*See* Jurisdiction 64, 73, 74.

31. Of "otherwise vary" in s. 153 Act X.—*See* Appeal 147.

32. Of "*abadkaree talookdaree.*"—*See* Lease 43.

33. Of "attachment and sale" in ss. 201, 203, and 250 Act VIII.—*See* Sale 29.

34. Of "credible information" in s. 280 or 282. *See* Recognizance 2, 3, 5, 6.

35. Of "same class" in cl. 1 s. 17 Act X.—*See* Enhancement 215.

36. Of "prevailing rate" in ditto.—*See* Enhancement 216.

37. Of "just and reasonable cause" in s. 377 Act VIII.—*See* Practice (Review) 57, 61.

38. Of "place" in s. 99 of Mutiny Act.—*See* Jurisdiction 280.

39. Of "application" in s. 7 Reg. XVII of 1806.—*See* Mortgage 182.

40. Of "increase of productive powers" in cl. 2 s. 17 Act X.—*See* Enhancement 219.

41. Of "revenue" in Note (*d*) Act II sch. B Act X of 1862.—*See* Stamp Duty 37.

42. Of "jurisdiction" in s. 87 Act VIII of 1869 (B. C.)—*See* Jurisdiction 467.

43. Of "proceeding" in s. 20 Act XIV.—*See* Limitation (Act XIV of 1859), 137*a*, 210.

44. Of "instrument" in s. 50 Act XX of 1866.—*See* Registration 53.

45. Of "*shon-ba-shon*" (or year by year) tenancy.—*See* Registration 62. *See also* 14 W. R. 99.

46. Where a kubooleut was justly given by N and D providing that, if the land (the subject of the kubooleut) passed into the *hands of others*, their heirs or *those who would succeed to their rights* would pay the rent, and N afterwards made over his interest in the lease to D,—*Held* that, in passing from N and D to D alone, the lease had passed into the *hands of others*, and that D occupied the place of *those who would succeed to their rights*.—10 W. R. 464.

47. Of "farmer" in Reg. XVII of 1827 (Bombay Code). —*See* Farmer 3.

48. Of "a share or part of share in an intestacy" in s. 6 Act XI of 1865.—*See* Small Cause Court 21.

49. Of "summary decision or award" in s. 23 Act XIV of 1859.—*See* Limitation (Act XIV of 1859) 241.

50. Of "*poora dustoor* (or full customary) rate."—*See* Enhancement 214*a*.

51. Of "valuable security" in s. 30 Penal Code.—*See* Security 11.

52. Of "using" in s. 471 Penal Code.—*See* Forgery 22.

53. Of "relating to the execution of the decree" in s. 11 Act XXIII of 1861.—*See* Practice (Execution of Decree) 152.

54. The words "*sudder khajana*" do not necessarily mean a rental payable to Government, but may imply a rental payable to the zemindar.—12 W. R. 90.

55. Of "declaration" and "agreement" in s. 48 Act XX of 1866.—12 W. R. 217.

56. Of "appealed against" in s. 84 Act XX of 1866.—*See* Registration 84.

57. Of "description" in s. 26 Act VIII.—*See* Plaint 33, 40.

58. Of "clear and positive proof" in s. 14 Reg. III of 1793.—*See* Limitation (Reg. III of 1793 s. 14) 13.

59. A document obtained by the chief male member of a joint Hindoo family should receive a strict —.—(P. C.) 13 W. R., P. C., 3.

60. Of "children."—*See* Will 32.

61. Of "alienated" in s. 92 Act VIII.—*See* Injunction 4.

62. Of "next sitting of the Court" in s. 21 Act XI of 1865.—*See* Small Cause Court 28.

63. Of "servant" in cl. 2 s. 1 Act XIV of 1859.—*See* Limitation (Act XIV of 1859) 138.

64. Of "rent."—*See* Rent 80.

65. Of "estate" in s. 5 Act XI of 1859.—*See* Sale Law (Act XI of 1859) 23.

66. Of "receipt" in s. 33 Act XI of 1859.—*See* Sale Law (Act XI of 1859) 25.

67. "Satisfied" in s. 318 Act XXV of 1861 means "legally satisfied."—13 W. R., Cr., 19.

68. "Due proof" in s. 316 Act XXV of 1861 means "legal proof," *i.e.* proof on oath.—*Ib.*

69. Of "any deed, bond, contract, or other obligation," in cl. 7 s. 16 Act XVI of 1864.—*See* Registration 91.

70. Proper — of "revision" in s. 151 Act X.—14 W. R. 27.

71. Of "Court" in s. 208 Act VIII of 1859.—*See* Practice (Execution of Decree) 172.

" in art. 167 sch. II Act IX of 1871.—*See* Limitation (Act IX of 1871) 4.

72. Of "established usage" in s. 20 Act X.—14 W. R. 99.

73. Of "within the jurisdiction of the Court" in s. 304 Act VIII.—*See* Pauper Suit 3.

74. Of "a person" in s. 7 Act XL of 1858.—*See* Court of Wards 8

75. Of so many beegahs of land "more or less" in a pottah.—*See* Pottah 27.

76. The words "Local Government" in Act XI of 1865 do not include a Chief Commissioner.—14 W. R. 331.

77. Of "improper means" in s. 272 Act VIII.—*See* Collusive Decree 4.

78. Of conveyance by several of "the whole and entire property absolutely."—*See* Conveyance 10.

CONSTRUCTION (*continued*).

79. Of "admitted" in s. 376 Act VIII.—*See* Practice (Review) 86.
80. Of "other property" in s. 205 Act VIII.—*See* Practice (Attachment) 40.
81. Of "suit."—*See* Appeal 3, 5, 178, 185.
82. Of "duly authorised agent" in s. 301 Act VIII.—*See* Principal and Agent 48.
83. Of "incumbrance" in s. 16 Act VIII of 1865 (B. C.). —*See* Building 11.
84. Of "dependent talookdars" in Reg. VIII of 1793.—*See* Enhancement 256.
85. Of Sale certificate.—*See* Certificate 46.
86. The words "whether for the decision of such cases in the first instance or on appeal, or for commitment to any other Court or officer" in s. 11 Act XXV of 1861, are not intended as an exhaustive enumeration of the functions of Criminal Courts.—(F. B.) 15 W. R., Cr., 64.
87. Of "cause of action" in cl. 12 of High Court's Charter.—*See* Cause of Action 20.
" " in s. 2 Act VIII.—*See* Cause of Action 23.
" " in s. 5 Act VIII.—*See* Cause of Action 25; Jurisdiction 484, 499.
88. If a particular — of a part of a document renders a contract evidenced by it inoperative, and another — renders it operative and is reconcilable with other portions of the document, the first should give way to the second.—16 W. R. 119.
89. Of "District Judge" in s. 102 Act VIII of 1869 (B. C.). —*See* Appeal 182.
90. Of "representative, assign, or agent," in s. 36 Act XX of 1866.—*See* Registration 112.
91. Of "khood-khast ryots" in s. 16 Act VIII of 1865 (B. C.)—*See* Under Tenures 16.
92. Of "amount" and "or secured" in art. 15 sch. 1 Act XVIII of 1869.—*See* Stamp Duty 71.
93. If the express words of an Act of the Legislature do not warrant or necessitate a demand of duty or tax, it is not competent to a Court of Law, in construing such enactment, to extend it or give the words a meaning beyond their strict and literal signification, so as to include any case which may reasonably come within the spirit of such enactment.—16 W. R. 208.
94. Of "cultivated or held" in s. 6 Act VIII of 1869 (B. C.).—*See* Occupancy 96.
95. Of "uses any premises" in s. 77 Act III of 1864 (B. C.).—*See* Municipal 17.
96. Of "or other cause" in s. 14 Act XIV of 1859.—*See* Limitation (Act XIV of 1859) 290.
97. Of "residence" in s. 5 Act XL of 1858.—*See* Certificate 93.
98. Of "may" in s. 372 Act VIII.—*See* Special Appeal 135.
99. Of a "proceeding in a civil case."—*See* Mandamus 3.
100. Of "*karindah*" and "nij-jote."—*See* Pottah 30.
101. Of "furnished" in s. 6 Act VII of 1870.—*See* Court Fees 16.
102. Mode of — of native deeds and contracts.—(P. C.) 18 W. R. 81.
103. Of "before the appellant is called upon to appear and answer." in s. 342 Act VIII.—*See* Security 16.
104. Of "contract" in s. 6 Act XI of 1865.—*See* Jurisdiction 434.
105. Of "suit for land" in s. 5 Act VIII.—*See* Jurisdiction 394.
" " in s. 12 of High Courts' Charter. —*See* Jurisdiction 515.
106. Of "subject matter in dispute" in s. 22 Act VI of 1871.—*See* Appeal 191, 193.
107. Of "talook."—*See* Talook 4.
108. Of "possession" in s. 318 Act XXV of 1861.—*See* Land Dispute 40.
109. Of "acting" and "pleading" in Act XX of 1865.—*See* Mookhtar 10, 20, 21.
110. Of "such sanction may be given *at any time*" in s. 169 Act XXV of 1861.—*See* Criminal Proceedings 10.
111. Of "in the meantime" in cl. 15 s. 1 Act XIV of 1859.—*See* Limitation (Act XIV of 1859) 304.
112. In construing a judgment, if a difficulty is found in reconciling the conclusion ultimately arrived at with the previous part, such previous part must be rejected.—19 W. R. 104. *See also* 22 W. R. 202.
113. Of a decree "with usual costs and interest."—19 W. R. 152.
And "with costs and damages."—19 W. R. 343.
114. Of a summons or proclamation "duly served" as required by s. 56 Act X.—*See* Ex-parte Judgment or Decree 32.
115. An ambiguous decree must be construed so as to be in harmony with the words of the law.—19 W. R. 251.
116. Of "evidence" in s. 79 Act III of 1864 (B. C.).—*See* Municipal 23.
117. In construing a deed of sale where the terms are ambiguous, the conduct of the parties immediately after, and acting upon the deed, is very important.—19 W. R. 432.
Also an enquiry into the circumstances under which it was executed.—21 W. R. 119.
118. Of "act" in s. 5 Act XX of 1865.—*See* Mookhtar 21.
" in s. 282 Act XXV of 1861.—*See* Recognizance 22.
119. Of "information" in s. 138 Act XXV of 1861.—*See* Information 5.
120. Of "jujmanee right."—*See* Hindoo Law (Religious Ceremonies) 17.
121. Of "the *first hearing* of the suit" in s. 128 Act VIII. —*See* Evidence (Documentary) 59.
122. Of "subject to a mortgage" in s. 271 Act VIII.—*See* Sale 82.
123. Of "shall" in Rule of July 1867.—*See* Full Bench 9.
124. Of "representative in interest" in s. 21 Act I of 1872.—*See* Auction-Purchaser (Execution Sale) 36.
125. Of "places adjacent" in cl. 1 s. 18 Act VIII of 1869 (B. C.).—*See* Enhancement 23.
126. Of "minor" and "minority" in Act X of 1865.—*See* Succession 4.
127. Of "date" in s. 327 Act VIII.—*See* Arbitration 85.
128. Of "stipulated period" in ss. 7 and 8 Reg. XVII of 1806.—*See* Mortgage 221.
129. Of "defendant" in s. 11 of High Courts' Charter of 1865.—*See* High Court 154.
130. In a suit to recover money lent on a mortgage which defendant refused to register, defendant put a — upon the arrangement which was accepted by the Court and the claim dismissed as premature,—*Held*, when plaintiff sued again in due (*sc.* mature) time, that it was not open to the parties or to the Court to say that the first — was wrong. —21 W. R. 374.
131. Of "public servant."—*See* Public Servant.
132. Penal Statutes must be strictly construed; and it would not be right to include chapter XXIII of the Penal Code (relating to attempts) within the provision of s. 75 when that section only mentions other chapters of the Code. —21 W. R., Cr., 35.
133. The definition of "sessions case" in s. 1 Act X of 1872 must be understood as if the word "only" followed the words "triable by a Court of Session."—21 W. R., Cr., 41.
134. Of "taken into account" in s. 308 Act X of 1872.—*See* Damages 105.
135. Of "any transaction" in s. 13 Act I of 1872.—*See* Evidence 89.
136. The illustrations in an Act are only intended to assist in construing the language of the Act, and should not be looked at more than the words of the section of the Act.—22 W. R. 367.
137. Of "restrained from exercising a lawful profession, trade, or business," in s. 27 Act IX of 1872.—*See* Contract 42.
138. Of "projah."—*See* Landlord and Tenant 54.
139. Of "under-tenant" in s. 46 Act VIII of 1869 (B. C.). *See* Putnee Talook 112.
140. In the — of a Regulation or Act of the Legislature, the preamble of a Statute can only restrict the words of the Statute itself where there is an ambiguity in those words.—22 W. R., Cr., 20.
141. Of "judicial proceeding."—*See* Contempt of Court 11; High Court 110.
142. Of "extortionately" in s. 6 Act VIII of 1851.—*See* Toll 4.
143. Of "as of right" in s. 27 Act IX of 1871.—*See* Limitation (Act IX of 1871) 11.
144. Of "year."—*See* Limitation 214.
145. Of "month."—*See* Limitation 214.

CONSTRUCTION (*continued*).

146. Of "adoptive father" in art. 129 sch. II Act IX of 1871.—*See* Limitation (Act IX of 1871) 13.

147. Of "direct from the Collector" in s. 75 Act IV of 1870 (B. C.).—*See* Court of Wards 11.

148. Of "promise or acknowledgment" in s. 20 Act IX of 1871.—*See* Limitation (Act IX of 1871) 18.

149. Of "heads of the charge to the jury" in s. 464 Act X of 1872.—*See* Jury 41.

150. Of "defect in procedure" in s. 88 Act XX of 1866.—*See* Registration 149.

151. Of "title" in ss. 3 and 6 Act XXVII of 1860.—*See* Certificate 118.

,, in s. 102 Act VIII of 1869 (B. C.).—*See* Special Appeal 134.

152. The words "*sreni krame*" in a sunnud were held to mean "in succession" in the sense of succession first of the mother and then of the children born of her womb.—24 W. R. 268.

153. Of "settlement" in s. 37 Act XI of 1859.—*See* Settlement 26.

154. Of "appellate judgment of acquittal" in s. 272 Act X of 1872.—*See* Appellate Court 17.

155. Of "accurate" in s. 83 Act I of 1872.—*See* Survey 30.

156. Of "interruption," "abandonment," and "discontinuance" of an easement with reference to s. 27 Act IX of 1871.—*See* Limitation (Act IX of 1871) 38.

157. Of "*nila zamin*."—25 W. R. 398.

158. Of "transferred" in s. 56 Act X of 1872.—*See* Jurisdiction 516.

159. Of "award" in s. 327 Act VIII.—*See* Arbitration 95.

160. Of "sufficient cause" in s. 327 Act VIII.—*See* Arbitration 95.

161. Of "good and sufficient reason" in s. 376 Act VIII.—*See* Practice (Review) 95*a*.

162. Of "not otherwise specially provided for" in art. 145 sch. II Act IX of 1871.—*See* Limitation (Act IX of 1871) 45.

163. Of "compass map."—*See* Survey 34.

See Abatement 19.
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Zur-i-peshgee Lease 32.

Contagious Diseases.

1. The mere possession of a registration ticket under Act XIV of 1868 does not necessarily make the holder of it a registered public prostitute.—12 W. R., Cr., 55.

2. There is no appeal from a conviction under s. 11 Act XIV of 1868 for a registered prostitute neglecting to appear for examination.—17 W. R., Cr., 11.

Contempt of Court.

1. A party who bids for an estate at a sale in execution with knowledge that he is not in a position to deposit the earnest money, obstructs the business of the Court, and is guilty of —, punishable under s. 228 Penal Code.—W. R. Sp., Mis., 3.

2. Where an advocate, offended by some expressions used by a Judge while sitting in Court, sent an officer to the Judge's private residence to ask for an explanation or apology, the party sending the message, and the party conveying it, were held guilty of —.—1 Hyde 79.

3. A suitor should not communicate with a Judge in any other manner than by public proceedings in open Court respecting the merits of any case in which he is interested, either pending or likely to come before the Judge.—4 W. R. 86.

4. The High Court, as a Court of Record, has the power of summarily punishing for —.—8 W. R., Cr., 32.

5. The asking for presents from successful suitors by, and the giving of presents by successful suitors to, officers of the High Court, are a —.—*Ib.*

6. There is nothing to prevent a Magistrate from taking cognizance of a — under s. 174 Penal Code committed against his own Court.—8 W. R., Cr., 61 (*over-ruled* by 13 W. R., Cr., 66). *See* 9 W. R., Cr., 13.

CONTEMPT OF COURT (*continued*).

7. The Court before which a — under s. 179 Penal Code is committed should not deal with the offence itself, but should, under s. 163 Act XXV of 1861, after recording a statement of the facts constituting the — and the statement of the accused person, forward the case to a Magistrate.—11 W. R., Cr., 49.

So also as to a — under s. 228 Penal Code.—12 W. R, Cr., 18.

8. Course to be observed, and punishment to be awarded, when the summary and other procedures sanctioned by s. 163 Act XXV of 1861 are observed.—12 W. R., Cr., 18.

9. Bail must be accepted under the same section if sufficient be tendered.—*Ib.*

10. In a conviction under s. 228 Penal Code it ought to be stated that the Judge was sitting in a (and what) stage of a judicial proceeding.—12 W. R., Cr., 64.

11. A Magistrate was held to have no jurisdiction in a case of — committed before a Sub-Registrar who did not proceed under ss. 435 or 436 Act X of 1872; the Sub-Registrar being a public officer under Act VIII of 1871, his proceedings being judicial proceedings within the meaning of s. 228 Penal Code, and his Court a Court as defined in Act I of 1872.—22 W. R., Cr., 10.

See Absconding Offender 7.
Costs 72.
Dismissal of Suit or Appeal 1.
Jurisdiction 371.
Practice (Criminal Trials) 21.

Contempt of Lawful Authority of Public Servant.

1. A person is guilty of — under s. 185 Penal Code by bidding at an auction sale held by a Magistrate and failing to complete the sale.—3 W. R., Cr., 33.

2. A Collector is not bound to dispose of a case of — under s. 147 Act X of 1859, but may proceed under s. 171 Act XXV of 1861.—9 W. R., Cr., 3.

3. Why the law requires the permission of the public servant for bringing a charge of — under s. 182 or any other section of chapter X Penal Code.—9 W. R., Cr., 31 *See also* 11 W. R., Cr., 22; 19 W. R., Cr., 33.

4. A Deputy Magistrate not in charge of a division of a District has no jurisdiction to try a case under s. 174 Penal Code which originated under s. 68 Act XXV of 1861, and was not referred to him by the Magistrate of the District.—10 W. R., Cr., 4.

5. There is nothing in s. 219 Act XXV of 1861 which prevents an accused person who has forfeited his bail-bond by default of appearance, from being proceeded against under s. 179 Penal Code, notwithstanding that his surety has paid the penalty mentioned in the recognizance. 10 W. R., Cr., 4.

6. What is — under s. 174 Penal Code.—10 W. R., Cr., 33; 14 W. R., Cr., 20.

7. An accused cannot be convicted under s. 188 Penal Code of knowingly disobeying an order promulgated by a public servant if no such order is on the record.—18 W. R., Cr., 30.

See Jurisdiction 371.
Practice (Criminal Trials) 21.
Witness 32.

Contraband.

See Master and Servant 2.
Salt.

Contract.

1. Mutuality of assent or obligation necessary to the making of a valid —.—S. C. C. 1.

2. Mutuality of — not affected by inequality of terms.—S. C. C. 48.

3. A person is liable in respect of a promise made by him for himself personally and so expressed on the face of his letter, as he cannot show that it was made for a third party without introducing parol evidence to vary the written —.—S. C. C. 94.

4. When a party engages to do a specific work for a specific sum, and fails by accident to do it and does not cause it to be done, he cannot recover anything upon his —.—S. C. C. 98.

5. Where a defendant denies — and it is found that there was a —, his answer to the action falls to the ground, and the Court cannot make a new case for him and decide against the plaintiff on the ground of a breach of —.—S. C. C. 98.

6. Until a defendant shows that he has complied with the conditions of a — binding on him, he cannot ask for the fulfilment of the conditions, which only become binding on the plaintiff when the defendant, by fulfilling his part of the —, places himself in the position of a party capable of requiring the plaintiff to do the same.—2 Hay 123.

7. When a collateral — is broken by one party, it is in the discretion of the other party to sue for, and of the Court to grant, relief, either in the shape of specific performance of the — or restoration of the consideration so long as the consideration can be found in the hands of the party who failed to perform his share of the —.—2 Hay 154.

8. If a second — be entered into between two parties in revocation of a previous one, either of the parties cannot fall back upon the conditions of the first —, on the ground of breach, by the other party, of the subsequent —, unless there be express conditions to that effect in the latter.—2 Hay 229.

9. Where a tenant promised that, in the event of his obtaining possession of certain land, he would be responsible for all rents found to be outstanding after comparison of the collection papers for 1259, it was held that the comparison of the collection papers was a condition precedent to the tenant's liability.—2 Hay 667 (Marshall 562).

10. The acceptance by defendant of almost the entire sum *after* the period stipulated in the —, was held to amount to a waiver on his part of that condition in the — which related to the time within which plaintiff was bound to pay up the purchase-money. That being so, defendant was bound to give the plaintiff some stated time within which he expected him to pay up the trifling balance; and as he gave him no such intimation, he could not now refuse to take the balance, or say that he was relieved from the obligation of fulfilling his —.—Sev. 718*a*.

11. In the absence of a specific — a European firm in Calcutta is not bound by a — with their Banian.—2 Hyde 129, 301.

12. Where a — is partly printed and partly written, and there is a conflict between the printed and written part, the written part must be taken to control the printed part.—2 Hyde 242.

13. A third person may voluntarily consent to incur liability on account of another.—(P. C.) 2 W. R., P. C., 43 (P. C. R. 409).

14. Executory contract. *See* Assignment 15; Bill of Sale 3; Limitation (Act XIV of 1859) 75, 152; Registration 44; Vendor and Purchaser 15, 18.

15. Under what circumstances a person may sue to set aside an agreement under which he has lent money, on security of a lease of land subject to extension of term in the event of deficiency in the assets.—4 W. R. 70.

16. Where a suit for damages, and not a suit for specific performance of —, was held to be the correct form of action.—7 W. R. 142. *See* 21 W. R. 433.

17. Distinction, between cases of convention and agreement, and between *implied* contracts and *quasi* contracts.—(F. B.) 7 W. R. 377, 9 W. R. 206, 14 W. R. 181, 18 W. R. 128.

18. Fraudulent misrepresentation may entitle a party to avoid a — altogether, but not to have its terms partly altered by the Civil Court.—9 W. R. 92.

19. Parol Contract.—*See* Limitation 233; Registration 12, 59, 78, 92, 118.

20. Where a *putnee* was by agreement promised to one party and given to another, the latter, being no party to the stipulation, is not bound thereby.—10 W. R. 254.

21. But if the latter had notice of the agreement, he cannot in equity maintain the *putnee* which he has obtained. 10 W. R. 414.

22. Rule as to specifications respecting time and place for performance of — and as to rescission by one party of — violated by the other.—11 W. R. 58.

23. The signature to a document which, although blank when signed, was afterwards filled up with words already

CONTRACT (*continued*).

agreed upon by the parties, is as binding as if attached after the words had been written.—11 W. R. 217.

24. Where one of the two parties to a special agreement, which has been performed, has had his share of the benefit, the other may sue him either on the special agreement, or on the implied —.—12 W. R. 520.

25. Where plaintiff as part consideration for a lease agreed to be responsible for certain decrees outstanding against defendant and is afterwards absolved from such responsibility by paying down a certain sum, he cannot recover the money if defendant should subsequently successfully contest one of the decrees.—13 W. R. 114.

26. In all matters of — between Hindoos, the law applicable in the ordinary Civil Courts of the country govern Courts of Small Causes.—13 W. R. 148.

27. Where an agreement provides that an act is to be done by one of the parties within a limited time, and the party fails to perform the act within such time, if the other party elects notwithstanding to take the benefit of the —, the latter must perform his part of it; and though exact and literal performance of the original stipulation has become impossible, the terms of the — must be carried out as nearly as possible.—13 W. R. 359.

28. Part of contract.—*See* Specific Performance 7.

29. Contract for marriage.—*See* Marriage 28, 36, 39, 42; Public Policy 4, 5.

30. Agreement to execute conveyance.—*See* Breach of Contract 20; Registration 44.

31. Defendant agreed to purchase from plaintiff 2000 maunds of indigo seed, "guaranteed growth of 1870-71." Defendant's agent took delivery of 865 maunds after full opportunity of examination. Defendant was held to have accepted the 865 maunds as in accordance with the —, although not really so; yet as plaintiff had not delivered the whole quantity contracted for, he could not recover for the 865 maunds at the — rate, but as upon a new — according to their value at the time.—(O. J.) 17 W. R. 244.

32. Where no privity of — was inferred in a case where the original contractees assigned to a third party the freight primarily due to themselves.—18 W. R. 145.

33. Contracts *contra bonos mores*.—*See* Public Policy.

34. In a suit for damages for breach of — where the Statute of Frauds does not apply and there has been an interchange of bought and sold notes, plaintiff may prove by parol evidence the existence and terms of a — on which he can maintain the action.—(O. J.) 18 W. R. 411.

35. There may be a binding — if the parties intend it, although bought and sold notes are to be exchanged or a more formal — is to be drawn up.—*Ib.*

36. Where bought and sold notes do not agree, they cannot be used as evidence of a —; but the fact of their differing and not being returned does not show that, at the conclusion of the negotiations, the parties did not agree.—*Ib.*

37. The agreeing not to enforce a — which is void for illegality is an illegal consideration, and the contract is void.—(O. J.) 18 W. R. 424.

38. Where a *putnee* lease of certain properties was to be executed in plaintiff's favor in case certain money borrowed from them was not repaid by a given date, the money in that case being considered as a *bonus* for the lease, and the deed embodying this stipulation was to be counted as a *putnee* pottah if the lease was not executed,—*Held* that the money not having been paid or the pottah executed, the plaintiffs were entitled to possession on the footing of a pottah from the date of suit; the transaction being a — to create a *putnee*; or that, if the Court deemed the *bonus* inadequate, it might equitably relieve defendant upon payment of the original sum with interest.—19 W. R. 274.

39. Contract to exchange.—*See* Interest 104.

40. Where a party in a former suit without qualification successfully resisted specific performance of a —, he cannot afterwards treat the — as subsisting.—21 W. R. 433.

41. Act IX of 1872 applies in the Calcutta Small Cause Court to suits between Hindoos for damages for breach of —.—(O. J.) 22 W. R. 370.

42. The words "restrained from exercising a lawful profession, trade, or business" in s. 27 of the above Act apply not only to an absolute restriction, but to a partial restriction also, *e.g.* one limited to some particular place.—(O. J.) *ib.*

43. Contract relating to social and religious customs.—*See* Jurisdiction 496; Public Policy 4.

44. It is incumbent on one who repudiates a — and asks to have it treated as void, to take steps for this purpose at the earliest possible moment without any avoidable delay. —22 W. R. 529.

45. A —, although one of the contracting parties was induced to enter into it by fraud of the other, is nevertheless binding upon him until he repudiates it; and this he cannot do when he has allowed that to occur on the footing, or in view, of the —, which renders it impossible to put the parties *in statu quo*. In such circumstances his proper remedy is by an action for damages.—*Ib.*

46. Where, by reason of a promise, the promisee refrains from bringing a suit, which, but for the promise, he may have brought, there is good consideration for the promise: but if, at the time of the promise, no remedy remained to the promisee by reason of limitation, there is no valid consideration, and the promise cannot be enforced at law.—23 W. R. 62.

47. Post-nuptial contract.—*See* Husband and Wife 39, 40.

48. Where, after examination of a sample of certain goods contracted for, it is agreed by both parties that the goods should be taken at a rate less than the — rate, the parties cannot after that raise the question of breach of — and ask for damages by reason of the goods not being of the quality contracted for.—(O. J.) 23 W. R. 136.

See Bill of Exchange.
Bill of Lading.
Bill of Sale.
Bond 16*a*, 26.
Breach of Contract.
Breach of Contract of Service.
Broker 1, 2.
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Contract for Labor.
Contractor.
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Co-sharers 62.
Costs 17.
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Damages 2, 3, 15, 71, 103.
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Disclaimer 1.
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" (Oral) 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18, 19, 20, 22, 23, 27, 36, 43, 44, 45, 48, 52.
Fraud 1, 19.
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" " (Coparcenary) 77.
" " (Religious Ceremonies) 2.
Ikrarnamah.
Indigo 2, 13, 18, 20, 21.
Interest 19, 34, 104, 115, 116.
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Landlord and Tenant 27.
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" (Act XIV of 1859) 7.
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CONTRACT (*continued*).

See Partnership 11, 27.
Pleader 39.
Possession 34.
Practice (Amendment) 16.
,, (Attachment) 66.
,, (Execution of Decree) 216, 268.
Pre-emption 40, 41.
Principal and Agent 3, 11, 14, 35, 36, 52, 54.
Promissory Note.
Ratification 2.
Registration 129, 134.
Rent 92, 99, 102.
Res Judicata 3, 74.
Sale 101.
Service Tenure 4.
Shipping 1, 2.
Small Cause Court 17, 18, 26.
Society 2.
Special Appeal 25, 77, 130, 143.
Specific Performance.
Stamp Duty 53, 60, 75, 76.
Succession 4.
Vendor and Purchasor 7, 41, 70.
Zemindar 1, 2.

Contract for Labor.

Procedure under ss. 31 and 32 Act VI of 1865 (B.C.).—12 W. R., Cr., 29.

Contractor.

1. A — who received advances from Government to construct a railway feeder, purchased coal in pursuance of his contract and after depositing it in a certain spot absconded,—*Held* that Government had no claim to the coal.—7 W. R. 426.

2. Where A, B, and C jointly and severally contracted to do certain work, and the contract was completed by B alone, A was held entitled to recover from B his share of the money paid for work partly done by him.—15 W. R. 413.

3. Such a suit was held not to be one for money due on a contract, and therefore not cognizable by a Small Cause Court.—*Ib.*

4. A — for work who, by failing to fulfil the conditions of his contract, forfeits the money deposited by him as security, cannot also be held liable for damages for breach of contract, unless the damages exceed the money which was deposited.—22 W. R. 254.

5. Where a — was acquitted of cheating in respect of a sum of money which he received on account for work which it was alleged he had not finished.—23 W. R., Cr., 43.

See Account 3.
Partnership 11.
Stamp Duty 54.

Contribution.

1. If one of several co-guarantors, on the default of the principal, pays more than his proportion of the debt, he may recover the excess from the others by —.—W. R. Sp. 70. *See also* 14 W. R. 458.

2. Where a single guarantor pays the debt, he may sue his co-guarantors, and that without previous application to, or process against, the principal.—*Ib.*

3. Where one of the parties jointly liable discharges the whole debt, he may sue his co-debtors for —, but can only sue each for his share.—W. R. Sp. 303.

4. In a suit for — on account of two out of three decrees, the defendant was not allowed to set-off against plaintiff (who had paid up all his own dues) for excess payments on the third decree.—1 W. R. 162.

5 Where one of several judgment-debtors was released and discharged from all further liability under the decree, by an arrangement between the decree-holders and all their debtors, and that arrangement was followed by the decree-holders, causing their suit for execution of decree to be withdrawn,—*Held* that the liability of the discharged debtor could not be revived so as to render him liable for —.—1 W. R. 311.

6. In a suit for —, a decree cannot pass jointly against all the defaulters, but should specify the particular sums to be paid by each.—3 W. R. 170, 7 W. R. 194, 11 W. R. 538.—*See* 18 *post.*

So also as against the joint holders of a jote jumma.—11 W. R. 453.

7. A summary order of an inferior Court for the execution of a decree is not necessarily conclusive against the parties liable as amongst themselves.—3 W. R. 208.

8. A suit for — will not lie in respect of the expenses of family idols where a Hindoo ancestor makes no endowment or trust for their support.—5 W. R. 29.

9. In a suit for — of Government revenue, the Court should not proceed simply on the fact of payment by plaintiff, but should also consider whose money was paid.—*Ib.*

10. In a like suit, the previous paid and recognized quotas must be taken as the proper *data* for distribution, until a regular butwarra is made and sanctioned under Reg. XIX of 1814.—5 W. R. 112.

10*a*.—A suit for — is not founded upon implied contract, but the obligation to pay rests on a different ground, *viz.* that *in æquali jure* the law requires equality, whether as regards — by co-sharers towards payment of Government revenue, or — by sureties, or — to general average.—(F.B.) 7 W. R. 377, 21 W. R. 255.

11. Principle in assessing a co-sharer's share of revenue paid for the whole estate to save it from sale.—8 W. R. 166.

12. Where one person jointly interested with others in land is compelled to pay Government revenue (or rent) in excess of his proper share, each co-sharer is bound to refund so much as he ought himself to have paid, and this obligation may be enforced by a suit against all the co-sharers in which the amount of their several liabilities is to be declared by the Court, and not by a joint decree declaring them collectively liable.—10 W. R. 10, 14 W. R. 143.

13. A, having taken by assignment from J a mortgage of certain property, died, and the mortgagor having obtained a decree for possession and surplus proceeds, executed it against some of A's heirs, who sued to obtain — from the other heirs,—*Held* (1) that six years was the limitation for such suits and that the cause of action arose from the sale of the property in execution; (2) that it was not wrong for the Lower Court to decree a liability in lump against N, one of A's heirs, although N had various representatives; and (3) that although J was a defendant in the suit by the mortgagor, he was not liable, as he had had no interest in the property, and had received none of its profits.—10 W. R. 31.

14. In a suit for — in respect of Government revenue paid for an estate, it is sufficient for plaintiff to prove that he has paid more than his share, and his co-sharers less than theirs.—10 W. R. 158.

15. In a suit for — dismissed by the Lower Appellate Court for non-specification of shares,—*Held* that that Court was bound to adjudicate on the evidence.—11 W. R. 131.

16. In a suit for —, the test of plaintiff's title to recover the money that he sues for, is to see whether there was any legal necessity arising to him from reasonable probability of any injury resulting to him in case he did not make the payment.—12 W. R. 128.

In other words, that it was not an officious or voluntary payment.—12 W. R. 462, 15 W. R. 52.

17. A decree having been executed for the full amount against a joint debtor, he was declared entitled to re imbursement from his co-debtors, although a proceeding in the execution case was not *bonâ fide.*—13 W. R. 298.

18. A claim for — should distinctly set forth the amounts due by each party sued, failing which the plaint should be rejected.—14 W. R. 373, 15 W. R. 52.

And the decree should determine separately the amount to be contributed by each; the liability of each of the defendants in a — suit being not a joint but a several liability.—23 W. R. 283, 24 W. R. 250.

Where it is possible for the Court to fix the amount of liability of each of a number of co-debtors in a suit for —, the Court should so fix that liability.—23 W. R. 421.

CONTRIBUTION (*continued*).

19. The person in use and occupation of a share of a jote cannot plead in a suit for — that he was not a party to the suit in which a joint decree for arrears of rent was passed, in satisfaction of which the plaintiff was obliged to deposit the entire amount of the decree.—16 W. R. 8.

20. Any judgment-debtor, under a joint and several decree, paying more than his share is entitled, whether the decree-holders have or have not given a release to any of the other debtors, to sue his co-debtors for —.—16 W. R. 49.

21. Parties are liable for — according to their respective interests in a property, and not simply *per capita*.—16 W. R. 78. *See also* 20 W. R. 209.

22. In a suit for — by the managers of a joint family estate against other members of the family, the claim was considered inequitable where plaintiffs had failed to show that the assets and liabilities of the alleged joint family had been divided fairly and honestly, and that they had duly accounted to the defendants for anything that had come into their hands.—17 W. R. 335.

23. A zemindar who holds partly as a *dur-putneedar* is entitled to look to his co-sharers in the zemindaree for — of Government revenue paid by him to save the entire estate from sale; and the fact of his being a sharer in the *dur-putnee* cannot bind him to recover his over-payments from the putneedars.—14 W. R. 461.

24. In a suit for — it must be distinctly proved that both parties enjoyed the benefit of the object to the gaining of which they executed a bond jointly.—17 W. R. 530.

25. In a suit for —, where, according to the claim as laid in the plaint, the defendants are co-principals with the plaintiff, each being bound to pay only his own share of the debt to discharge his own part of the obligation, plaintiff has no cause of action and has no right to come into Court and ask to be paid by his co-sharers before he has done anything to discharge his own portion of the obligation, or until he can show that he has done something on their behalf.—19 W. R. 24.

26. *Quære*.—As to how a suit may be framed which would enable plaintiff to bring an action against defendants before he himself shall have paid the full amount that represents his share of the debt under the decree obtained against him by the bond-holder.—*Ib.*

27. In a suit by one of several share-holders in certain mortgaged property to recover — on account of payment made by plaintiff to save the property from being foreclosed, the zemindar's collections were held to be better evidence of the proportion payable by defendant, than the sudder jummas of the villages to which the claim related.—20 W. R. 163.

28. Where a zemindar obtained a joint decree for costs against certain villagers and attached the property of one of them, who now sued the others for —,—*Held* that the suit would not lie.—20 W. R. 235.

29. In a suit for — towards the amount paid by plaintiff in satisfaction of a joint decree passed against himself and defendant, the defendant is not liable to recoup the plaintiff if he had substantially no interest in the subject of the former suit.—20 W. R. 242.

30. Where, to prevent a sale, plaintiff's mother paid the rent of a portion of a talook which she claimed under a will, and sued to recover, and the suit abated by her death, her interest was held to be such as entitled the plaintiff to recover from the share-holders the money she paid to save the talook.—20 W. R. 272.

31. Where one debtor, although liable for a portion, pays the whole debt, he has the right of against all and every one of his co-debtors, and is entitled, in respect of the security given for the original debt, to stand in the same position as the creditor whose claim on that security he has satisfied.—22 W. R. 430.

32. A share-holder who pays up arrears of rent due from the whole of the tenure in order to save it from sale in execution, is entitled to recover — from other share-holders who were in possession during the period within which the arrears accrued; even though the tenure should be in the name of another, and the decree be nominally against such other alone.—22 W. R. 531.

33. The fact that a 2-anna sharer of an 11-anna share of a talook is also a 2-anna share-holder in the zemindaree does not in any degree affect the right of his co-sharers in the talook to recover from him that amount which he ought to contribute towards the portion of the zemindaree rent payable to them; the former not being at liberty to set-off the one right against the other, because, although in a certain sense they were opposing rights, still they were not mutual rights as between the parties to the present suit.—23 W. R. 134.

34. A decree for rent having been obtained against a number of defendants jointly, the property of one of them (K) was sold in satisfaction, whereupon the heirs of K brought a suit for — against the other defendants and obtained a decree declaring the amount to be severally contributed. In execution the property of one of the defendants (B) was attached, who, to save it from sale, paid the demand and now sued the other defendants (including one N) for —,—*Held* that N, after letting the second decree go against him, cannot be allowed to go behind it, and say that there never was any liability under the original decree.—24 W. R. 66.

35. In a suit against A K for — of moneys paid in satisfaction of two decrees under which the present plaintiffs and defendants were jointly liable, and one of which decrees was founded on an *ekrar* executed by the parties to the present suit and by one F, not a party, who was expressly excluded from liability in the decree last mentioned, the Judge considering that F was liable under the *ekrar* but not under the bond in which the other decree was founded, decided that there were two distinct causes of action and dismissed the suit,—*Held* that the cause of action on which plaintiffs relied was simply the joint liability of the parties under the decree, and that the Judge did wrong in imparting a different cause of action: and that if F was to be brought in as a party to the suit, it could only be done on the application of the defendants under s. 73 Act VIII.—25 W. R. 41.

See Co-sharers 19, 22, 60.
Costs 5, 9, 75, 77.
Cross Decrees 12.
Evidence (Admissions and Statements) 31.
Hindoo Law (Partition) 6.
Interest 13.
Intervenor 59.
Jurisdiction 237.
Limitation 95.
,, (Act XIV of 1859) 13, 53, 70.
Mesne Profits 83.
Mortgage 214.
Onus Probandi 51, 274.
Partition (Butwarra) 18.
Partnership 22.
Practice (Execution of Decree) 11, 59, 98.
Putnee (Talook) 29.
Sale 166.
Set-off 20.
Small Cause Court 14, 17, 18.
Water Course 9.

Conversion.

Two notes are stolen from A, which B (not a *bonâ fide* holder for valuable consideration) tenders to C in payment for certain articles. C, not knowing B, refused to deal with him, whereupon B brings D who is known to C, and the purchase is made by him.—*Held* that the part which D performed in the transaction amounted to a "— of the notes to his own use," and that he was liable to A.—1 Hyde 263.

See Marriage 15.
Onus Probandi 140.

Conveyance (Transfer and Assignment).

1. Effect of unlicensed transfer of leases.—W. R., F. B., 8 (1 Hay 62).

2. Mere production of a —, without proof of title, will not

CONVEYANCE (*continued*).

avail... to turn another out of possession.—W. R., F. B., 20 (1 Hay 137, Marshall 75).

3. By Hindoo widow and rights of reversioner.—(F. B.) W. R., F. B., 165 (L. R. 4). *See also* 1 Hay 339, Mar. 113, L. R. 141, Sev. 601, Sev. 136 *pp.*, Sev. 230.

4. Assignment of indigo factories. Meaning of *Dena powna.*—(F. B.) W. R., F. B., 167 (L. R. 7).

5. The Court declined, on the strength of a document which purported to convey a property absolutely, to give a decree for the life estate.—1 Hay 171.

6. Where a son has divested himself of all interest in property received from his parents, the clearest proof must be given of good faith and the absence of improper influence before legal effect can be given to the transfer.—W. R. Sp. 121.

7. The attestation or signing of a deed of — of property made with full knowledge of the contents of the deed and of the object of the signature, may convey the right of the person signing, even if the signature be not made in the assembly where the deed was executed.—1 W. R. 66.

8. Where the *bonâ-fide* character of a — is at issue, evidence as to the subsequent conduct of the parties is most important.—2 W. R. 30, 21 W. R. 105.

9. An assignment of property by a Hindoo woman without consideration or proper advice was set aside as improperly obtained.—5 W. R. 246.

10. When several persons join in a — and convey "the whole and entire property absolutely," they must be taken to have exercised every power which they possessed, and to have parted with their whole interest, whether in possession or expectation.—14 W. R. 379.

11. It is not illegal for a judgment-debtor to dispose of his property before attachment, provided the transaction be an actual and not a merely nominal —.—15 W. R. 155.

12. In a suit upon a contract in which defendant, after receiving an advance of purchase money, had promised to convey certain land to plaintiff on payment of the balance, the alternative being that if he did not execute the —, the contract would itself operate as a —.—*Held* that the document, though in form a contract for sale, was in fact a conveyance under which plaintiff could hold against subsequent purchasers.—15 W. R. 239.

13. Where a person who has made a voluntary gift or settlement of an estate sells the same to another for value, the — operates as a — of the estate which the settlor had before the voluntary settlement, the statute 27 Eliz. c. 4 putting the settlement out of the way, so that it shall not affect the — which is made to the purchaser.—(O. J.) 22 W. R. 60.

14. Words showing an intention on the part of the person who made the voluntary gift to convey to the purchaser all the interest or estate that he had, are sufficient to avoid such gift. (O. J.) *ib.*

15. Before a man can be held to have given by his conduct an implied assent to a transaction, especially one which operates as a — of a valuable estate, it must be shown that he was fully aware of what the transaction was, and what effect it would have upon his interests at the time he so conducted himself as to indicate assent.—22 W. R. 341.

See Assignment.
Attorney and Client 16.
Benamee.
Bill of Sale.
Building 8.
Certificate 30.
Champerty.
Construction 117.
Damages 11.
Deed of Sale.
Endowment 22, 24.
Evidence 7, 62.
,, (Estoppel) 26, 134.
,, (Presumptions) 4, 15.
Fraud 4, 21.
Hindoo Law (Alienation) 13.
See Hindoo Widow 3, 7, 8, 9, 11, 12, 13, 16, 19, 28, 33, 93.
Husband and Wife 19.
Junglebooree Tenure 3.
Jurisdiction 515.
Lease 7, 8, 21.
Limitation 7, 73.
Minor 13, 27.
Onus Probandi 226.
Possession 23.
Practice (Possession) 3, 34, 79.
Purdah-women 3.
Putnee Talook 58
Registration.
Reversioner 9.
Sale.
Stamp Duty 70, 71.
Title 3, 14, 17.
Trust 6.
Vendor and Purchaser.

Conviction.

1. Previous convictions.—*See* Jurisdiction 229; Jury 35; Practice (Criminal Trial) 5; Punishment 4, 6, 9; 7 *post.*

2. A subordinate Court has no power to quash its own —, though illegal, by a second —.—6 W. R., Cr., 70.

3. A — upon no evidence is wrong in point of law.—7. W. R., Cr., 6.

So also a — based not upon the evidence recorded, but upon unrecorded evidence taken subsequently.—24 W. R., Cr., 11.

So also a — upon evidence not recorded in the presence of the accused.—24 W. R., Cr., 76; 25 W. R., Cr., 14.

So also a — upon evidence taken in a former trial set aside on the ground of want of jurisdiction, and without calling upon the accused to plead.—24 W. R., Cr., 64.

4. That the facts proved would also constitute an offence under a section of the Penal Code is no reason for quashing a — under Act V of 1861.—8 W. R., Cr., 55.

5. A — by one Magistrate upon evidence recorded before another is bad, and the defect cannot be cured by the evidence being again recorded and the — confirmed.—8 W. R., Cr., 59.

So also a — by a Judge who was not the Judge who tried the prisoner.—21 W. R., Cr., 47.

6. Under ss. 362 and 363 Act XXV of 1861, where a prisoner pleads guilty, his — upon that plea is valid, although there are no assessors.—10 W. R., Cr., 43.

7. Previous convictions how to be proved.—15 W. R., Cr., 52, 53.

8. A — under a repealed law was not interfered with where the repealed law had been re-enacted and no injustice had been done.—16 W. R., Cr., 12.

9. A — cannot be amended; it must either be wholly good or wholly bad; part of it being bad, it is bad altogether and must be set aside.—(O. J.) 18 W. R., Cr., 44 (*foot note*). *See* 24 W. R., Cr., 3; 25 W. R., Cr., 6.

10. A valid — arrived at by a Magistrate who had jurisdiction in the matter cannot be set aside simply because, subsequently to the trial and —, fresh evidence has been discovered which may tend to convict the accused of an offence other than that for which he was convicted.—21 W. R., Cr., 47.

11. A — upon the statement of a complainant is lawful.—22 W. R., Cr., 32.

See Assessors 6.
Autrefois Acquit 2.
Criminal Proceedings 13.
Evidence (Estoppel) 86.
High Court 109.
Irregularity 5.
Kidnapping 6.
Practice (Amendment) 31.

CONVICTION (*continued*).

See Practice (Criminal Trials) 1, 5, 82, 85.
Prosecutor 4.
State Offences 8.
Sunday 2.

Cooch Behar.

See Practice (Criminal Trials) 19.
,, (Execution of Decree) 166.

Coparcenary.

See Appeal 100.
Bond 2.
Christian.
Co-sharers.
Costs 80.
Covenant 1.
Damages 18.
Forfeiture 12.
Hindoo Law (Coparcenary).
Joint Tenants.
Jurisdiction 14, 85, 179.
Mortgage 14, 20, 29, 116, 126, 127, 135.
Notice 11.
Partition 4, 6.
Possession 2.
Pre-emption 17, 29, 47, 48, 65.
Small Cause Courts 4, 5.
Survey 9.

Copyright.

1. General resemblance is insufficient to establish a right to —; there must be proof of unfair and undue use. Where there is no original matter in a work, the strongest evidence of servile imitation and piracy must be afforded.—1 Hyde 9.

2. — in designs, being a right created by the Statute Law of the United Kingdom and not thereby expressly extended to India, is a right that cannot be recognised and enforced by the Courts of Law in British India.—16 W. R. 90.

Co-Plaintiffs.

Where the respective interests of — were left to be determined in a fresh suit.—6 W. R. 90.

See Bond 17.
Damages 78.
Dismissal of Suit or Appeal 11.
Joinder of Parties 2, 7, 8, 15, 16, 17, 30, 32, 34, 35.
Limitation 134.
Withdrawal of Suit or Appeal 7.

Co-Respondents.

See Costs 82.
Limitation (Execution of Decree) 12.
Objection (under s. 348 Act VIII of 1859) 2, 3, 4.

Corporation.

See Firm.
Occupancy 104.
Practice (Suit) 86.

Corroboration.

See Evidence (Corroborative).

Co-Sharers.

1. A co-sharer may sue to recover possession of his share, making his — defendants, and may obtain a decree for possession simultaneously with an order for a partition between him and his —.—2 Hay 378. *But see* 10 W. R. 487.

But he cannot sue without making all the — parties to the suit.—23 W. R. 386.

2. A person may sue his — for his share of the rents or to set aside a lease granted by them; but he cannot sue for separate possession on the assumption of a division which has not taken place.—1 R. J. P. J. 232 (Sev. 948).

3. Where several — intended to divide their estate and agreed that, if before division any land should be cultivated by a shareholder, he should pay rent,—*Held* that such shareholder could not be sued under Act X of 1859 for arrears of rent.—W. R. Sp. (Act X) 42 (2 R. J. P. J. 204). *See also* 13 W. R. 59.

Legal position of — defined.—*Ib. See also* 12 W. R. 418, 20 W. R. 126, 258.

4. Rent for *mal* or *neej jote* lands cultivated by some of the —, is payable to the proprietors collectively. A suit by other — to enforce that liability cannot, by reason of non-payment for any number of years, be saved by limitation.—Sev. 80r.

5. Although one of several joint proprietors, in whose favor a tenant has executed an engagement to pay rent, is entitled to bring a suit against the tenant to recover the rent, he cannot sue the tenant for what he deems to be his proper portion of the rent, but he must sue for the whole rent making his — parties to the suit.—Sev. 212. *See* 14, 25, 29 *post*.

6. Where three out of four — who mortgaged their property, pay off the mortgage, they, as well as those who take by sale or mortgage from them, hold the share of the fourth co-sharer subject to the equity of redemption existing in him.—Sev. 365.

7. The fact of a mokurrureedar having for any reason agreed to pay an enhanced rent to one shareholder, does not entitle another shareholder to demand enhanced rent except in accordance with s. 13 Act X of 1859.—3 R. J. P. J. 23.

8. Where over-payments are claimed from — who plead other payments, the Court should go into the whole account between the parties, strike a balance, and decree accordingly.—W. R. Sp. 93.

9. Where, under color of buying A's rights and interests sold in execution, the purchaser usurps the shares of A's partners, they need not sue to reverse the sale, but merely to recover their shares; nor are they bound to sue to establish their right as part-owners of the land within the time allowed for actions to set aside sales in execution.—W. R. Sp. 322.

10. The cause of action against a co-sharer for partition first arose when he got possession of the whole property under a survey award.—W. R. Sp. 323.

11. A shareholder may sue for his ascertained share of rent without either waiting for the other — joining in the suit or adding them as parties.—W. R. Sp. (Act X) 63 (2 R. J. P. J. 305). *See also* (*F. B. ruling*) 55 *post*. *But see* 11 W. R. 270.

12. A sharer in an estate held in coparcenary cannot enforce a claim for rent against a party who denies his liability, until the estate is regularly partitioned.—W. R. Sp. (Act X) 106 (3 R. J. P. J. 82).

13. Tenancy of a co-sharer unable to prove that he holds in his own right a portion of a joint estate occupied exclusively by him, declared to be a joint tenancy rendering him liable to pay rent for it to the — jointly.—1 W. R. 34 (3 R. J. P. J. 157).

14. An owner of a fractional share of an undivided estate can sue for his share of the rents.—1 W. R. 253 (3 R. J. P. J. 324). *See also* (*F. B. ruling*) 55 *post*.

15. No act of temporary dispossession by a third party can take away the right of a part owner of an estate to her share of the rent from the tenant.—1 W. R. 325.

16. If one co-proprietor chooses to accept the service of his tenants in lieu of rent, or to remit the rent, another co-proprietor is not affected as regards his share of the profits of the land.—1 W. R. 330.

17. Sale of personal property by one co-sharer without authority makes the purchaser liable to be sued by another co-sharer for the price of his share.—2 W. R. 37.

Co-Sharers (*continued*).

18. A Small Cause Court has jurisdiction to try such a suit.—*Ib.*

19. If a co-sharer pays the Government revenue in respect of another share, and sues and obtains a decree against one of several persons interested in that share, and sells the share in execution of that decree, the interests of the other persons not sued are not affected by a decree to which they were not parties, or by a sale which did not profess to bind their interests.—2 W. R. 38.

20. A co-sharer cannot mortgage more than his own share of the property; and his creditor, in execution of a decree, can sell no more than his rights and interests.—3 W. R. 119.

21. The right of a co-sharer cannot be bound by adverse possession set up by a lessee from the —.—3 W. R. 144.

22. The portion of Government revenue payable by a co-sharer may be ascertainable even where his portion of a mehal is not separate and specifically defined.—4 W. R. 60.

23. The acts of the majority of — are not binding on the other sharers as to their own share of the property.—4 W. R. 104.

24. The receipt of one coparcener on behalf of himself and others cannot be taken as a recognition of joint possession by all, when the shares are recognised and defined as among the coparceners and each has a right to his own collections and to give receipts.—5 W. R. (Act X) 7.

25. A plaintiff who, with his —, has given a joint lease to the defendant, is not competent to sue alone for his undivided share of the rent.—5 W. R. (Act X) 68. *See also* 12 W. R. 30, 418; 14 W. R. 432; 15 W. R. 20; 16 W. R. 281; 17 W. R. 408, 414; 22 W. R. 394; 23 W. R. 37.

Much less for enhanced rent.—17 W. R. 408, 414; 25 W. R. 221. *See* (*F. B. ruling*) 55 *post*.

26. Until a partition takes place, a co-sharer is entitled, as such, to partake in the joint possession of all the land which was held *khas* by the — or would be now so held by them if they had not granted a lease.—5 W. R., Mis., 15.

27. When — occupy a house to the exclusion of one of their number, after notice that he would charge rent for his share, they are just as liable to pay him rent for the house as for any other species of property.—6 W. R. 17.

28. Where plaintiffs sue their — who allow judgment to go by default, the question to try is whether plaintiffs have proved their title to the shares they claim.—6 W. R. 94.

29. The representative of a deceased member of a joint Hindoo family cannot sue separately for the deceased member's share of rent, received jointly, of a joint estate.—(F. B.) 6 W. R. (Act X) 71.

30. A co-sharer in an under-tenure cannot sue his putneedar for a partition of the tenure and separate payment of his share of the rent without the consent of the zemindar; and if the zemindar refuses to make a division of the property, application should be made to the Collector under s. 27 Act X.—9 W. R. 606. *See* 13 W. R. 75, 17 W. R. 169.

31. When right and title to possession of one co-sharer accrue as against another who, after resumption, is the only one who appears and settles with Government in behalf of himself and others.—10 W. R. 14.

31*a*. A co-sharer in landed property has no right, without the consent of his —, to do anything which alters the condition of the joint property, *e.g.* to commence a building.—10 W. R. 171, 16 W. R. 140.

Or to remove a building.—25 W. R. 306.

Or to grow indigo in lieu of the ordinary crops.—16 W. R. 41, 23 W. R. 428. *See* 21 W. R. 17.

32. Where a third party was recognised as joint proprietor of an estate, plaintiff was held not entitled to sue for the whole rent in his own name.—10 W. R. 331.

33. Share-holders with a tenant are primarily liable with him to the zemindar, who is not bound to recognise their holding as separate; his taking rent from them not amounting to a recognition under s. 16 Act VIII of 1865 (B. C.).—10 W. R. 467. *See* 15 W. R. 360.

34. A suit against a co-sharer for a share of money recovered by him upon a decree which was joint property may be brought in a Small Cause Court.—12 W. R. 372.

35. The separate registry of the names of sharers in the zemindar's sheristah is not proof of separation of their shares.—13 W. R. 124.

36. A sharer of an undivided talook is not entitled to recover rent from the jotedar of a particular jote unless there is an agreement to that effect.—13 W. R. 316.

37. A Court of Equity will not interfere where a tenant-in-common enjoys the property held in common without injury to his coparcener; but the case is different where there is a direct infringement of a distinct right.—13 W. R. 322.

As in building a factory on joint property upon a title derived from one co-sharer without the consent of the other.—16 W. R. 140.

38. One of several — cannot, without the consent of the other —, interfere with the enjoyment of property by a tenant who derives his title from all.—13 W. R. 337, 24 W. R. 110.

38*a*. The holder of a small share was allowed to sue alone to set aside the sale of an estate held by several — and to recover his share.—14 W. R. 489. Over-ruled by F. B. who held that each co-sharer could not sue separately to set aside the sale unless the suit was so framed and valued as to be brought in a Court where the rights of all the parties interested in setting aside the sale might be declared in one suit.—(F. B.) 21 W. R. 68. *See also* 23 W. R. 408.

39. The word *ijmalee* expresses joint-tenancy even where commensality is not implied.—15 W. R. 93.

40. A co-sharer in an estate under partition has no *locus standi*, before the *butwarra* is completed and defines the lands appertaining to each share, to sue to set aside a mokurruree lease granted by another co-sharer by which plaintiff might never be injuriously affected at all.—15 W. R. 106.

41. A Commissioner's order to proprietors of separate jummas to pay through one of their number does not override their legal right of separate proprietors or transform it into a joint tenancy of —.—15 W. R. 141.

42. A suit for rent is not maintainable at the instance of one or more of several —, unless the latter have been accustomed to collect their rents separately.—15 W. R. 248. *See also* 19 W. R. 168, 22 W. R. 385, 394, 526.

Where the lease binds the lessee to pay a single sum to all the —, a suit for rent by one of them will not lie even on the allegation that plaintiff has collected his rents separately for several years.—24 W. R. 267.

43. A tenant's liability to pay his jumma to the party entitled cannot be split up without his consent, so as to make him liable to pay fractional portions of rent to the purchasers of fractional shares in the zemindaree.—15 W.R. 395. *See also* 19 W. R. 168, 22 W. R. 385. 394.

44. A sum of 2 lacs of rupees which had been paid by a debtor in part satisfaction of a larger sum due to the plaintiff and defendants, the heirs of a deceased banker, according to their shares in the estate, was appropriated by the defendants. The several — brought separate suits against the debtor for their separate shares, the result of which was that the 2 lacs were appropriated to the whole debt and plaintiff's debt was thereby reduced by 25,000Rs., while defendants received 16,000Rs., more than they were entitled to from the common debtor. Plaintiff now sued for his full share of the 2 lacs, and defendants pleaded limitation, more than 12 years having elapsed from the date of the original payment of the 2 lacs. *Held* (1) that limitation ran, not from the date of the original payment, but from the time that defendants received more than their proper share, and (2) that plaintiff was entitled to receive, not the 25,000Rs. which he had lost as the result of the proceedings against the debtor but the 16,000Rs. which defendants had received over and above their proper share, and which must be considered as money had and received by defendants to plaintiff's use.—(P. C.) 16 W. R., P. C., 20.

45. Although one co-sharer cannot lease out the whole property belonging to himself and the other —, he may give a lease of his share binding against himself.—17 W. R. 420, 21 W. R. 17.

46. A suit for rent by the 15 annas 6 pies share-holders, was held to be maintainable in the absence of dispute as to the extent of their share, and where the 6 pies co-sharer was made a defendant and found to have collected the rents of his share separately.—17 W. R. 452.

47. A co-sharer who takes over into his own hands from the Receiver the management of his share, is entitled to sue, or be made a party under s. 73 Act VIII to a suit

Co-Sharers (*continued*).

already brought, for rents which accrued before the Receiver's discharge.—18 W. R. 16.

48. A share of an *ijmalee* estate may be joint and not separately defined in a revenue point of view until a *butwarra*, and yet it may be a distinct share comprising distinct *puttees* or lands exclusively belonging to the holder of such share as between him and his lessee.—18 W. R. 148.

49. The proprietors of an estate entered into separate possession, and the ryots paid separately to each the rents due on account of his share in anticipation of the completion of a *butwarra*, for which proceedings had been taken, but were subsequently quashed on the grounds that they included lands which had since been resumed as a separate estate. Plaintiff sued for a fractional share of the rent; but inasmuch as defendant's lands fell within the share of another proprietor, and plaintiff had not joined his — as parties, or asked the Court to determine his rights as against theirs.—*Held* that no relation of landlord and tenant existed between plaintiff and defendant, and that plaintiff had no cause of action.—18 W. R. 148.

50. The right of a sharer in a joint estate is a right of common enjoyment of the lands and premises, together with the tenants of the —, in like manner as the — themselves would have it.—20 W. R. 126.

51. Where land has not been partitioned, plaintiff as share-holder is part owner of every beegah, and can claim either to occupy the land jointly with defendant, the other share-holder, and insist that, with the exception of occupancy ryots, the land shall not be occupied otherwise than with his assent; and the exclusive possession claimed by the defendant amounts to a trespass. In a case of this kind an injunction is the proper remedy.—20 W. R. 168. *See also* 25 W. R. 313.

52. Where one of two co-owners of land who are not joint (*i.e.* who own and collect separate shares of the rents) cultivates the land with the acquiescence of the other, the latter cannot claim a share of the profits but only his proper share of the rent.—20 W. R. 342.

53. As long as defendant's services are required and rendered, plaintiff cannot withdraw the land given to defendant as a consideration for those services by all the — before a *butwarra*, even though the assigned land fell under the *butwarra* within plaintiff's share.—20 W. R. 369.

54. A joint share-holder, or any lessee of a joint share-holder, can contract with the ryots of the zemindaree for any lawful purpose, even without the consent of the —. 21 W. R. 17.

55. A suit by a co-sharer for his share of the rent can be maintained.—(F. B.) 21 W. R. 46. *See* 23 W. R. 11. 268, 53; 25 W. R. 221. *But see* 25 W. R. 35.

56. Where land is held in joint proprietorship, an action to recover it from a stranger in wrongful possession must be brought in the name of all the proprietors.—22 W. R. 74.

57. One share-holder alone in a joint estate, or his assignee, cannot claim to cultivate any portion of the property which is not his *zerait*, and without the consent of the other sharers, merely on the ground that he is willing to pay a reasonable rent for it.—*Ib.* *See* 25 W. R. 313.

58. An arrangement between joint-owners of land, not being a joint Hindoo family, by which some parts of the property were to be exclusively in the possession of one or other of them, bars one of them from suing for the profits derived from any portion allotted to the exclusive possession of any other.—22 W. R. 180.

59. Where a co-sharer of a talook is compelled to pay a quota of the Government revenue due on account of a share not his own, in order to save the whole estate from being sold, he is entitled to a charge upon such share of the estate.—22 W. R. 411.

60. The zemindar, by becoming a share-holder in a talook, does not lose his right to the joint responsibility of the —ther — for the due payment of the rent, but only becomes bound to make in his claim for rent a just and equitable allowance for that portion of it which he, as a share-holder in the talook, ought to contribute.—23 W. R. 152.

61. In a suit for arrears of rent where it appeared that plaintiff was sole owner of an estate which formed a 12-anna share of the under-tenure of a *putteedar* and afterwards acquired the tenant-right of the remaining 4-anna share,—*Held* that s. 64 Act VIII of 1869 (B. C.) did not apply because plaintiff was not a sharer in a joint undivided estate.—24 W. R. 313.

62. Four brothers, on making a partition of their joint property, covenanted with each other that, if any one of them or their heirs had to sell his share, he should offer to sell the same to one of the —. One of the brothers having died, his widow sold his share which she had inherited, without such an offer to the surviving brothers, who thereupon sued her and her vendee for possession upon payment of what they alleged to be the value of the property,—*Held* that the plaintiffs had no right, under their contract, to elect, after the value had been ascertained, whether they would purchase at that price or not, it being very doubtful how far a perpetual covenant as to the disposition of land can be enforced.—24 W. R. 321.

The vendee being a stranger and no party to the agreement, the other parties interested cannot have the sale set aside or do more than recover damages from the recusant share-holder.—24 W. R. 428.

63. One co-sharer has no right to sue another co-sharer for exclusive possession or rent of a portion of the joint estate of which defendant has taken possession.—24 W. R. 393. *See* 25 W. R. 313.

63*a*. Possession of a plot of land does not constitute adverse possession in relation to a co-sharer, unless the latter claims or asserts some right in the land which is denied by the sharer in possession.—25 W. R. 53.

64. Where the rightful owner of a share of property recovers it from his co-sharer who held it in his own possession under a false title, the latter is not entitled to compensation for unnecessary repairs and improvements which he made for his own convenience.—25 W. R. 205.

See Ancestral Property 5, 9.
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See Limitation (Act IX of 1871) 5.
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,, Law (Act XI of 1859) 4, 5, 6, 7, 8, 27, 31, 32, 33, 34.
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Special Appeal 77, 127, 131, 149.
Sub-Lease 3, 4.
Theft 11.
Trees 5.
Under Tenure 14.
Vendor and Purchaser 20, 28, 46.

Costs.

1. Separate — were awarded to several defendants having but one identical answer, but being distinct parties, and having nothing in common except their interests in the property in suit which they had separately acquired from different co-sharers.—1 Hay 19. *See also* (*as to separate* —) 11 W. R. 36, 12 W. R. 6.

2. Where a claim is partly decreed and partly dismissed, it is usual to give proportional —.—1 Hay 141 (Marshall 79). *See also* 1 Hay 277.

But the matter is one within the discretion of the Court. —9 W. R. 61.

3. Government is entitled to — from the losing party in cases of claims to compensation for land taken for public purposes.—1 Hay 157 (Marshall 91).

4. Several defendants were sued in respect of the same matter, and though their defences were identical, they appeared separately. *Held* that the Judge below, in dismissing the suit, properly allowed to the defendants the — of a joint defence only.—1 Hay 162 (Marshall 95).

5. Where co-sharers who have paid their share of revenue assessments are made defendants in a suit for contribution, together with other co-sharers whose proportion was paid by the plaintiff, the defendants who have paid are entitled to their — of appearing, etc., notwithstanding the plaintiff may have made no claim against them, but has joined them merely for the sake of conformity.—1 Hay 500 (Marshall 239).

6. The demarcation of the land by the survey authorities is a necessary and legal act, and cannot render the Government liable to be saddled with — unless it can be proved that its officers were wilful wrong-doers. A mere allegation of a plaintiff, that an opponent colluded with the survey officers, is no reason for saddling the Governmnment with —.—1 Hay 520.

7. A person who, though made a party to a suit by a supplemental plaint, voluntarily appears without being summoned, should be saddled with his own —.—2 Hay 69.

8. A defendant was held wrongly saddled with the — of a suit dismissed as barred by limitation, whether the failure of the plaintiff to institute the suit within the prescribed time was the act of the defendant or not.—2 Hay 73.

9. In a suit to recover balance of revenue paid by the plaintiff on account of other co-sharers, the plaintiff was held entitled to get the — of his suit against all the shareholders (those who did not default as well as those who did) in proportion to their respective shares.—2 Hay 122.

10. The — of the defendants, which were not given by the Lower Court though the plaintiff's suit was dismissed, were allowed on appeal.—2 Hay 183.

11. After notice served upon and appearance made by the defendant, it appeared that the Civil Court had no jurisdiction but that the suit ought to have been instituted by the Revenue Court. *Held* that the Civil Court had jurisdiction to order the defendant his —; and that as he had been unnecessarily brought before the Court, it ought to order him his —.—2 Hay 188 (Marshall 311).

12. If a suit is dismissed on the ground of want of jurisdiction, the suit having been instituted in the wrong district, the Court has jurisdiction to order that the plaintiff shall pay the — of the defendant. -2 Hay 344 (Marshall 375).

13. Orders as to — being matters of discretion, a special appeal will not lie, as of right, on the ground that the Lower Appellate Court, in decreeing only a part of the plaintiff's claim, should not have awarded entire — but only — in proportion.- 2 Hay 107.

14. The Court below gave the plaintiff a decree in a suit for mesne profits, for such amount as should be ascertained to be due, and ordered that the plaintiff should have his — on the amount *claimed*. *Held* that this constituted no ground of special appeal, but that the remedy of the defendant was by application to the Court below to amend the order.- Marshall 503.

15. A defendant who colludes with the plaintiff, and induces him to bring a suit for his benefit, may be ordered to pay the — of his co-defendants in all stages of the suit, including those of an appeal in which he is merely made a co-respondent. -Marshall 609.

16. The appellant is chargeable with the — of the respondent on an appeal being struck off at the appellant's request.— Sev. 562.

17. Plaintiff got a *dur-putnee* of a certain estate from defendant's late husband, and now sues her for — incurred by him in defending his title, which was disputed by a third party. *Held* that, even if there was no satisfactory proof of an express request by defendant's husband for the advancement of the money by the plaintiff, the plaintiff was entitled to a decree upon the theory of an implied contract, inasmuch as defendant's husband was bound to give plaintiff a good title and was liable for whatever money was necessary to be spent in protecting that title. -Sev. 711.

18. The Sudder Court declared three persons who were unnecessarily made defendants entitled to their — in *both* Courts in a case which had been before *three* Courts; and the Judge in execution allowed the defendants their — in the three Courts. *Held* that the Judge had properly interpreted the decision of the Sudder Court.- -Sev. 745.

19. — carry interest to date of realization whether specified in the decree or not.—*Ib*: 1 W. R., Mis., 1; 2 W. R., Mis., 21; 6 W. R.. Mis., 15; 18 W. R. 31 *But see* 15 W. R. 335, 415.

20. Where the order of a Lower Appellate Court was reversed as regards the — of the parties who had appealed to it,—*Held* that the reversal of the order did not extend to those parties who remained satisfied with the decision of the Court of first instance and made no appeal, and that the decree for — stood good and could be enforced against them.—Sev. 762. *See also* 16 W. R. 302, 24 W. R. 471.

21. Where a general manager, instead of contenting

COSTS (*continued*).

herself with an answer disclaiming all connection with the ouster by the principal defendant and praying to be absolved from payment of —, tendered a defence in the absence of the principal defendant and set up an answer hostile to plaintiff's claim, the Court would not relieve her from payment of —.—Sev. 873.

22. To justify interference in appeal with a Lower Court's discretion as to —, there must be miscarriage or mistake.—W. R. Sp. 146.

23. The question how — have been awarded is not a point for special appeal.—W. R. Sp. 215, 7 W. R. 208.

Unless they have been awarded on an erroneous principle.—24 W. R. 319 (*reversed by* 25 W. R. 226).

24. Where a decree of the High Court dismissed an appeal with —, except as to certain appellants who were released and to whom — were awarded, and who incurred no separate — on account of their appeal, but took advantage of the joint appeal and joint Counsel of the other appellants, they were held to have had nothing as — to gain from the decree of the High Court, but were entitled to their — in the Lower Court, notwithstanding a separate order for the presentation of a second petition to that Court regarding those —, such order being held to be merely formal.—W. R. Sp., Mis., 11.

25. Where a mother's office of guardian had ceased, and she brought a suit knowing that she had no authority to sue as guardian, and a decree was given against her personally and not against the estate of her son, she alone was held responsible for the —.—W. R. Sp., Mis., 17.

26. How the Privy Council dealt with — in a case in which there was delay in suing, and which was attended with a considerable degree of suspicion.—(P. C.) 5 W. R., P. C., 77 (P. C. R. 13).

27. On an appeal by defendant against whom the suit was decreed in the Court of first instance, which decree was affirmed on appeal by the Sudder Court, the Privy Council held that the plaintiff had not made out his case below, and reversed the judgment, but awarded to the defendant — in the first Court only, and not in either of the Appellate Courts, on the ground that the plaintiff, as respondent, was defending the judgment.—(P. C.) 5 W. R., P. C., 33 (P. C. R. 54).

28. Where a discretion is vested in a Court as to —, the Privy Council will not allow any appeal against the exercise of that discretion, because no appeal lies against a decree as to — merely; but where a Court has no discretion (as when suit is instituted by parties who had no right to institute it), — must follow the decree, according to s. 7 Reg. II of 1800 (Bombay Code).—(P. C.) 5 W. R., P. C., 59 (P. C. R. 75).

29. Privy Council will disallow all — for unnecessary papers included in printed transcripts sent from India.—(P. C.) 5 W. R., P. C. 63 (P. C. R. 631).

30. Where an ill-conditioned person files a plaint for partition solely for the purpose of inflicting injury upon his joint-holders, the Court will, in the exercise of the power conferred by s. 187 Act VIII, mulct him in the entire —.—1 Hyde 122.

31. A portion of the — was awarded to the losing party in the exercise of the discretionary power given by s. 187 Act VIII.—1 Hyde 172.

32. Liability for — where one of the defendants in Court of first instance is made co-respondent with plaintiff in special appeal by another defendant.—1 W. R. 95.

33. In a suit for resumption in which there are several defendants, the plaintiff is liable in — to each defendant, only to the extent of the value of his interest in the lands released, and not upon the aggregate claim of the plaintiff.—1 W. R. 97.

34. *Ijmalee* holders, defendants, not entitled to separate —.—1 W. R. 139.

35. A plaintiff is not entitled to — in respect of property which defendant does not claim to hold adversely to him.—1 W. R. 162.

36. Cannot be refused to plaintiff's tenant) on the ground that he had demanded double of what was due to him in claiming damages for receipts for rent withheld.—1 W. R. 290 (3 R. J. P. J. 336).

37. The estate, and not the manager thereof, hold liable for the — of a suit instituted *bona fide* by the manager for the benefit of the property.—1 W. R., Mis., 1. *But see* 6 W. R., Mis., 124.

39. A party who succeeds in his appeal on some preliminary points, is entitled to his — irrespective of the result of the ultimate decision.—1 W. R., Mis., 12.

40. Where parties who have no interest in a suit are unnecessarily made co-defendants, the Court ought, as a general rule, to award them —.—2 W. R. 33, 152. *See* 60 *post* and 16 W. R. 291.

Such — to be paid by plaintiff and not by defendant.—10 W. R. 194.

41. The award of — being by s. 187 Act VIII discretionary with the Court, no appeal lies from its decision.—2 W. R. 33, 6 W. R. 19.

42. Members of a family living in the same place, when sued together on a common cause of action, are entitled to only one set of —.—2 W. R. 60.

43. In the Lower Court vakeel's fees are allowable once for all, whereas in the Appellate Court separate — are allowable for every time that appearance is entered on behalf of the winning party on remand or in review.—2 W. R., Mis., 29.

44. Government not liable for but entitled to — when made defendant in a suit for a certificate under Act XXVII of 1860, though it neither applied for such a certificate nor opposed the suit.—3 W. R. 23 (4 R. J. P. J. 388).

45. A Superior Court should give some reason for interfering with the discretion of a Lower Court as to —.—3 W. R. 109.

46. Appeal "dismissed with costs" means that the appellant should pay the — of the respondent.—3 W. R., Mis., 21.

But not the — in the first Court unless specified in Appellate Court's decree.—17 W. R. 445.

47. An order decreeing to plaintiff his — in proportion, must be taken to mean as if — were given in proportion to the amount decreed and dismissed, so that except where there is a distinct order restricting — to the plaintiff, the defendant is entitled to his — on the portion of the claim dismissed, although the order does not in words provide for it.—4 W. R., Mis., 9.

48. Where — were not awarded when special appellant obtained a reversal of a decree on a point not raised in the Lower Appellate Court.—5 W. R. (Act X) 94.

49. Objections as to — should be raised by application to amend or review the decree, or by regular appeal, but not in execution.—5 W. R., Mis., 4. *See also* 13 W. R. 330. *But see* 16 W. R. 294.

50. An appeal will lie upon a question of —, though any interference with the order of the Lower Court as to — ought to be exercised with discretion.—(F. B.) 6 W. R. 187. *See* 14 W. R. 255.

But not under Act X of 1870.—22 W. R. 136.

The High Court can in regular appeal review the exercise of the discretion of the Lower Court as to the award of —, but cannot interfere in special appeal unless the order made as to — is illegal.—(*Approved* in 4 Bom. H. C. 41), 25 W. R. 226 (*reversing* 24 W. R. 319).

51. A cannot sue B for — due to him by C on the ground that C has deducted them from — due to him by B.—6 W. R. 299.

52. A Court is bound to award, as — to a defendant, his pleader's fees according to s. 25 Reg. XXVII of 1814. The plaintiff cannot take advantage of any private arrangement between the defendant and his vakeel.—6 W. R., Mis., 35.

53. Where, if a decree or half of the decree had been enforced against a defendant, such defendant would be held liable for the — of the enforcement, the defendant's surety is also liable for the same under s. 204 Act VIII.—6 W. R., Mis., 35.

54. *Quære.*—Whether a Lower Court can award — of appeal to High Court in a case remanded by the latter without any order as to — of appeal.—6 W. R., Mis., 45. *See* 70 *post*.

55. What — are recoverable when — are awarded in proportion to the amount decreed and disallowed.—7 W. R. 127, 8 W. R. 55.

56. When a plaintiff sues as agent, and the suit is dismissed on the ground that it should have been brought in the name of the principal, execution for —, etc., cannot issue against the principal.—7 W. R. 143.

57. An order for full — was disallowed in a case where

COSTS (*continued*).

the defendants were only entitled to — in proportion to the value of their separate interests in the suit, according to Rule 7 of the Rules of Practice regarding Pleaders' Fees.—7 W. R. 159.

58. Where the plea of non-jurisdiction was taken in special appeal, each party was made to bear his own —.—7 W. R. 490.

59. Where one of several judgment-debtors jointly liable, having paid more than was due as between him and his co-defendants, sues for the excess, it is not necessary to make a defendant who has also paid more than his share, a party to the suit; but if so made, he is entitled to his —.—9 W. R. 288.

60. One who has needlessly been made a party to a suit, is entitled to — on the usual scale on the amount of the suit.—*Ib.* *See also* 11 W. R. 48, 12 W. R. 444. *See* 40 *ante.*

61. When a Judge's decree has allowed separate — to separate defendants, his successor cannot in execution alter the award.—9 W. R. 386.

62. After — have been levied from the plaintiffs, they need not be detained by the Court until a joint receipt can be obtained from all the defendants; the proper course being to give notice to the second set of defendants to prove within a reasonable time what portion they are entitled to.—*Ib.*

63. Awarded to a party who had succeeded in obtaining a material amendment of a certificate under Act XL of 1858.—9 W. R. 459.

64. Where defendants set up separate defences of different natures, only one set of — ought not to be awarded on the assumption that they are members of the same family.—11 W. R. 19.

65. Though the question of — is within the discretion of a Court, yet the Court is bound to give some reasons for the exercise of that discretion.—11 W. R. 48.

66. Though by Hindoo law a mother is a possible heir under certain circumstances, yet where — are decreed against a mother suing on behalf of her minor son and for his benefit, execution cannot without special reason be taken out against her personally or against her personal representative or estate.—12 W. R. 78.

67. Where plaintiff does not think fit to execute his decree and it becomes barred by limitation, defendant cannot take out execution for his —, which can only be deducted from plaintiff's decree and not recovered separately.—12 W. R. 308.

68. A co-defendant made a respondent in a defendant's appeal from a Judge's order disallowing his claim for —, is not entitled to —.—12 W. R. 444.

69. A Court executing a decree has no jurisdiction to order a judgment-debtor to pay as — any sum not mentioned in the decree in course of execution or in any decree in force.—13 W. R. 23.

70. The — of a special appeal in a remanded case can only be reversed if the High Court's order of remand provides that they are to abide the decision on appeal below.—13 W. R. 39.

71. How — or vakeel's fees were awarded in a suit dismissed for multifariousness.—13 W. R. 320.

72. The High Court has equitable jurisdiction to compel persons, not named as parties in the cause, to pay the — of the suit on the ground that they were the real plaintiffs and had been guilty of a contempt and abuse of the process of the Court in putting forward a sham plaintiff on the strength of a deed which they knew to be fictitious.—14 W. R., O. J., 1.

73. The Rules relating to Pleaders' Fees do not provide for the case of defendants who have separate interests and who consent to a decree, the amount of — in such a case being in the discretion of the Court.—14 W. R. 94.

74. Where co-sharers are made *pro formâ* defendants in a suit for partition, plaintiff should pay their —.—*Ib.*

75. A suit for contribution was held to lie in respect of — due under a decree of the Privy Council, for which execution was taken out against property belonging to the appellant who had deceased in the meantime and was represented by the plaintiffs and defendants in the present case.—14 W. R. 105.

76. Where a case was reversed by the High Court on appeal and remanded with orders allowing plaintiff to amend his plaint on payment of the — of the first two hearings,—*Held* that the stamp for the plaint was properly included in the — of the second hearing, and that the whole of the pleaders' fees should be paid for the second trial.—14 W. R. 148.

77. Where it was stipulated in a kubooleut that, if a suit then pending be decided against the lessors, the lessees shall pay the lessors' —, and if decided in their favor, the — awarded would go to the lessees; and the case was decided against the lessors: the lessees were held liable to pay all — recoverable from them, it bring matter for consideration whether power should not be reserved to the lessees to use the lessors' rights for recovering in a suit for contribution — paid in behalf of the other parties to the suit.—14 W. R. 191.

78. A Judge is not bound to give — at a certain valuation.—14 W. R. 255.

79. Cannot be given by the High Court upon a decree of the Privy Council granting partial relief in a suit, a portion of which is still *sub-judice*, if no — be provided for by such partial decree.—14 W. R. 387.

80. A deposit of — accompanied by a prayer that they should be enquired into upon a particular principle, does not imply an admission on the part of the depositor of his obligation to pay — to the extent of the deposit.—*Ib.*

81. The Civil Court was held competent to award costs against a Collector upon whose application an enquiry was ordered to be made into the conduct of the Civil Court Ameen who had made a local investigation in a suit to which the Collector was a party, the result of the enquiry being that the Ameen was acquitted.—14 W. R. 390.

82. The mere specification of — in a decree without an allotment of responsibility is not a sufficient compliance with s. 189 Act VIII.—15 W. R. 4.

83. Where the plea of non-jurisdiction was not taken until the case reached the Appellate Court, the party taking it was obliged to pay all the — of the opposite party before being allowed to proceed *de novo.*—15 W. R. 48.

84. How awardable by High Court in cases under s. 15 Act XIV.—15 W. R. 268.

85. Where the Privy Council reversed the decrees of three Courts in India with — in each, and dismissed the suit with —, specifying a sum as the — of the appeal to itself,—*Held* that such sum did not include the — of translation, etc., in the High Court.—15 W. R. 356, 18 W. R. 89, 23 W. R. 463.

86. Plaintiff, if entitled to some part of his claim, should not lose the benefit of his decree by an order making him liable to defendant for more in the shape of — than he would himself recover.—15 W. R. 465.

87. When an Appellate Court decrees an appeal and gives — of its own Court, the — of the first Court should be included in the decree.—16 W. R. 266.

88. The decision of a Subordinate Judge confirmed on appeal by the High Court, as to the amount of — under a decree, was held to be final; the officiating Subordinate Judge not being entitled thereafter to put an entirely new construction upon the decree.—17 W. R. 130.

89. A decree was not allowed to be amended by allowing the decree-holder the — of all the remands that took place in the case, when such amendment was applied for after the lapse of some 3½ years and when one of the Judges who made the order had ceased to be a Judge of the Court.—17 W. R. 358.

90. Where a judgment contained a remark to the effect that two persons had been improperly made defendants and ought to have their —, but the decree contained no such recital, the Court declined to allow execution for — to issue in favor of the two defendants.—18 W. R. 111.

91. The Privy Council saw no ground in this case for departing from the general rule of allowing but one set of — to respondents in the same interest.—(P. C.) 18 W. R. 163.

92. S. 360 Act VIII does not require the Judge of an Appellate Court to go into particulars or append to his judgment a schedule setting forth the different items which make up the costs of the first Court, but only to declare by what parties, and in what proportions if necessary, — are to be paid.—18 W. R. 286, 21 W. R. 74. *See also* 23 W. R. 89.

93. Where a defendant appeals on the question of — only, the Appellate Court ought to confine itself to that issue.—18 W. R. 507.

COSTS (*continued*).

94. Where two awards of — are made to both parties, execution should issue only for the difference between the two sums, the same rule being applicable whether the awards have been made in one suit or in different suits.—19 W. R. 187.

95. A certificate as to — under s. 9 Act XXVI of 1864 may be given at any time, *e.g.* by the Appellate Court where it was omitted to be given by the first Court.—(O.J.) 19 W. R. 207.

96. Ordinarily the — of an abortive appeal (owing to an imperfect decree) are — in the cause.—19 W. R. 267.

97. Where a decree under which — were recovered is reversed, no express order is needed for refund of the — ; the party who recovered them having no right to retain the same.—20 W. R. 49.

98. Where a plaintiff, applying to the Lower Appellate Court for a review, neglected to point out an omission, he was held not entitled to the — of the special appeal which was necessary to have it corrected.—20 W. R. 73.

99. Where — are decreed, it is not the actual expenditure that is intended but a lump sum of money in lieu thereof, estimated in a certain proportion to the value of the suit.—21 W. R. 288.

100. In a suit against a minor, if the Court considers that the guardian should be personally ordered to pay the —, it should be so stated in the decree. Where the guardian is simply declared liable for them as defendant in the case, the liability must be taken to refer to him as the representative of the minor and as representing his estate. —21 W. R. 298. *See also* 25 W. R. 316.

101. Where a decree, after awarding —, went on to provide for the redemption of the mortgaged property in dispute, or, on mortgagor's failure to pay, for its sale, and for the — being added to the mortgage-debt as a charge on the property,—*Held* that the latter provision was an alternative remedy which did not deprive the decree-holder of the right which the first part of the decree gave him of executing the order for — in the same way as any other money-decree.—21 W. R. 299.

102. How — were awarded in a suit brought by the Court of Wards on behalf of a minor when the name of no person appeared upon the record against whom — could be given.—21 W. R. 312.

103. Where a suit for damages was partially decreed on a finding of nominal damages, and — on the amount undecreed were awarded to defendant with interest,—*Held* that there was no good reason for such a course, and no ground of justice for saddling plaintiff with defendant's —. —24 W. R. 69.

104. The dismissal of a suit on the ground that plaintiff d declined to pay the — of an adjournment was held to l e unjust because there was nothing on the record to show what the Court had estimated those — at.—24 W. R. 189.

105. The Courts have discretion to allow, if the circumstances of the case require it, execution of a decree for — to be taken out against a guardian of a minor, or a manager of a lunatic's estate.—24 W. R. 264.

See Arbitration 40.
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Court Fees.

1. An appeal from an order on an application under s. 9 Act VI of 1862 (B.C.) is entitled to the benefit of the proviso in sch. 1 Act VII of 1870.—14 W. R. 21.

2. Where 6Rs. were awarded in a decree prepared while the old Stamp Laws were in operation as the value of the stamps for a copy, a copy was allowed to be taken for 4Rs. by a party applying after Act VII of 1870 came into operation.—14 W. R. 167.

3. An application for review of judgment alluded to in sch. I arts. 4 and 5 Act VII of 1870 does not include an application for a new trial in a Mofussil Small Cause Court. —14 W. R. 219.

4. An application for a probate of a will, or for letters of administration, comes under sch. II art. 1 Act VII of 1870.—15 W. R. 40.

5. Stamp duty is not chargeable on an application by a witness for the return of a document filed by him in obedience to a summons.—15 W. R. 237.

6. Stamp duty upon an appeal filed after Act VII of 1870 came into operation can only be levied according to the provisions of that Act, even though the original suit was valued according to Act XXVI of 1867.—15 W. R. 272.

7. Under Act VII of 1870, trust property is liable to the stamp duty prescribed by art 11 sch. I.—15 W. R. 456.

8. No stamp duty is payable under Act VII of 1870 on probate granted to a second executor, to whom grant of probate was reserved when the first probate was granted and stamp duty paid thereon.—15 W. R. 496.

9. Where a plaintiff prayed for a separation into two equal shares of the whole of the property to which she and defendant were equally entitled, and the Lower Court, instead of giving her the decree prayed for, decreed to her joint and undivided possession of her half share,—*Held* that plaintiff, as respondent on the appeal of defendant, was entitled, under s. 348 Act VIII, to re-assert her claim to a decree for possession in severalty, without paying an additional fee under s. 16 Act VII of 1870 which applies only where an increase of land or money would be the result.—15 W. R. 517. *But see* 24 W. R. 179.

10. What — payable when plaintiff chooses to examine defendant under s. 281 Act VIII, and what under s. 8 Act XXVII of 1861.—16 W. R. 84.

11. Where plaintiff seeks an account of his father's estate from the executor and claims damages to a certain amount in default of obtaining it, the suit should be filed on the stamp required for a suit for the amount to be recovered, and not on a stamp of 10Rs. under sch. II art. 17 cl. 3 Act VII of 1870.—16 W. R. 156.

COURT FEES (*continued*).

12. A plaint to have a summary order set aside, to have a will declared to be genuine, and to be retained in possession of the property of the deceased, was held to be one for consequential relief and one not coming under sch. II. art. 17 cl. 3 Act VII of 1870.—16 W. R. 213. *See* 19 W. R. 214.

So also a plaint for confirmation of possession and for setting aside a forged and invalid will.—22 W. R. 438.

13. When letters of administration are granted in respect of property subject to a mortgage, the *ad valorem* duty payable under Act VII of 1870 is the entire value of the property less the amount of the incumbrance.—16 W. R. 253.

14. In determining the stamp to be affixed to the grant of new letters of administration, credit should be given for the amount of duty already paid, so that such duty be not payable a second time.—*Ib.*

15. In a suit to establish a right as heir, and set aside a Certificate under Act XXVII of 1860, where consequential relief (such as permission to draw interest on Government Promissory Notes) followed, the fee prescribed by sch. II art. 17 cl. 3 Act VII of 1870 was held not sufficient.—16 W. R. 259. *See* 19 W. R. 214.

16. The word "furnished" in s. 6 Act VII of 1870 refers to the time when the Court determined to grant a Certificate under Act XXVII of 1860 and when it is to be drawn up ready to be issued to the party applying for it.—17 W. R. 489.

17. The mode of computing the value of the subject-matter of a suit, as provided by Act VII of 1870, applies only to determining the — to be paid, and not to the question of jurisdiction.—18 W. R. 108, 20 W. R. 33, 25 W. R. 39.

18. In estimating the amount of *ad valorem* fees chargeable under sch. I art. 2 Act VII of 1870, the fee must be paid in respect of the property without deducting the amount of the debts to be paid out of it.—(O. J.) 18 W. R. 153.

19. The *ad valorem* fee should be charged on the value of a house, and not on the rent of it.—(O. J.) *Ib.*

20. In a suit for a declaratory order to set aside a summary order under s. 246 Act VIII, where plaintiff also asked for an order "conferring possession after declaration of title,"—*Held* that consequential relief was sought, and that plaintiff was liable to the *ad valorem* duty under sch. II. art. 17 cl. 3 Act VII of 1870.—19 W. R. 17. *But see* 22 W. R. 422.

21. Where trust property was held exempted from the payment of the 2 per cent. *ad valorem* fee prescribed by sch. I art. 11 Act VII. of 1870.—19 W. R. 230.

22. There is nothing in s. 12 Act VII of 1870 which precludes a Judge from exercising his discretion in the matter of costs.—20 W. R. 206.

23. Where letters of administration were applied for in respect of certain securities and exemption from the duty prescribed by sch. I art. 11 Act VII of 1870 was claimed on the ground that, as the applicant's right had been declared by a decree of the High Court, she ought not to be required to obtain such letters,—*Held* that the duty must be paid, there being no ground for exemption.—20 W. R. 440.

24. Personal property appointed by will under general powers of appointment is not liable to the *ad valorem* fee payable on grant of probate.—21 W. R. 245.

25. The payment of the full duty of 10Rs. under Act X of 1855 in respect of letters of administration limited until grant of probate, was held to be not equivalent to the *ad valorem* fee payable under Act VII of 1870 on the grant of probate.—21 W. R. 246 (*foot-note*).

26. No sufficient ground was held to have been shown in this case for exemption from the duty prescribed by sch. I art. 2 in respect of doubtful assets or claims.—21 W. R. 397.

27. The object of the proviso in s. 12 Act VII of 1870 was to enable the Appellate Court to interfere for the protection of revenue in a case where a question of valuation might be raised and improperly decided.—22 W. R. 433.

28. The provision of finality in cl. 1 s. 12 Act VII of 1870 attaches to the value of the suit and not to the value of the stamp; a decision as to whether the full stamp duty should be paid being appealable under s. 36 Act VIII.—23 W. R. 296.

29. Where the object of an appeal was to vary the judgment of the Court below by conferring upon plaintiff a *mourosee* tenure of the land at a fixed rent, instead of an ordinary tenure at a fluctuating rent, and it appeared that it might be extremely difficult to calculate the value of the claim which plaintiff was making at the difference between the value of the land as held by one tenure and the other, the Court fixed the stamp according to the valuation put by plaintiff upon the subject-matter of the claim in his appeal.—24 W. R. 454.

See Rules of Practice 88.
Stamp Duty 49.

Court of Requests.

See Jurisdiction 278.

Court of Sessions.

It is only when a Court subordinate to the — convicts a person of an offence not triable by such Court, that the — can annul the conviction and sentence. If the prisoner is guilty of an offence beyond the jurisdiction of the Subordinate Court, the — should refer the case to the High Court. —4 W. R., Cr., 11.

See Commitment 9.
Construction 188.
Practice (Criminal Trials) 83.
Punishment 2, 5.

Court of Wards.

1. A female, whose estate is under the —, cannot give up her rights in favor of the next heir without its consent. —W. R. Sp. 39.

2. Under s. 14 Act XL of 1858, an estate ceases to be subject to the jurisdiction of the — when any of the co-proprietors attain majority; but the Judge may, on the application of the Collector, direct him to retain charge of the persons and shares of the still disqualified proprietors during the continuance of their disqualification or until such other time as may be otherwise ordered. —W. R. Sp., Mis., 2.

3. The — is not prevented by Act XL of 1858 from taking a minor and his estate under its protection, by reason of a certificate of administration granted by the Civil Court under that Act.—(F. B.) 3 W. R. 82 (4 R. J. P. J. 459).

4. Right of widow under — to object to or appeal from order agreed to by her guardian.—4 W. R., Mis., 5.

5. On a consideration of Regs. X of 1793 and LII of 1803, it was held that the mere fact that the — has charge of the estates of a female did not necessarily disqualify her from contracting debts.—(P. C.) 9 W. R., P. C., 9.

6. The obligation of a Collector, on behalf of the —, properly to manage a lunatic's estate, is different from liability to pay the latter's personal debts.—10 W. R. 175.

7. The — can maintain a suit for the recovery of land belonging to a minor which is in possession of a person not having a good title thereto.—14 W. R. 34.

8. The — is not "a person" within the meaning of s. 7 Act XL of 1858, and is not entitled to administer to an estate by virtue of a will or deed executed by a private person.—14 W. R. 295.

9. A pottah granted by a — without any term of years must be considered as not extending over 10 years, after which, on the lessee's refusal to make a fresh settlement, the Collector may settle with other parties.—15 W. R. 116.

10. The power of the — to represent the estate or to bring a suit on behalf of a minor, was held, with reference as well to s. 79 Act IV of 1870 (B. C.), as to the justice and equity of the case, not to cease with the death of the minor. —17 W. R. 560.

11. A tenure in an estate in charge of the —, which was in existence before the Collector ever had charge of the estate, cannot be said to be held "direct from the Collector" within the meaning of s. 75 Act IV of 1870 (B. C.), which applies exclusively to farms and tenures created during the management of the — ; and the Collector has no power to take summary proceedings under Act VII of 1868 (B. C.) to recover arrears of rent in respect of tenures not so created.—23 W. R. 362, 24 W. R. 149.

See Costs 102.
Evidence (Documentary) 86.
Hindoo Law (Adoption) 76.

COURT OF WARDS (*continued*).

See Jurisdiction 89, 151, 152, 225, 255, 269.
Lunatic 5, 21.
Majority 8, 9.
Manager 6, 10, 14.
Minor 45.
Sale Law (Act XI of 1859) 32.
Survey 2.
Trust 15.

Cousin.

See Certificate 23, 25, 112.
Hindoo Law (Adoption) 45.

Covenant.

The members of a Hindoo family, jointly and severally interested in a certain house and premises, covenanted for themselves, their heirs, and executors, that the said house and premises should never be partitioned, except by the unanimous consent of the contracting parties,—*Held* that, whether valid or not as regards parties representatives by purchase, the — was binding upon those who were personally parties to the deed.—2 Hyde 93.

See Benamee 30.
Co-sharers 62.
Damages 108.
Lease 12.

Creditors.

See Debtor and Creditor.

Criminal Breach of Trust.

1. A constable who dishonestly misappropriates to his own use the pay of his Thaunah Police entrusted to him is guilty of —.—3 W. R., Cr., 44.

2. Where a constable who was improperly charged with the custody of Government monies and gave security for the same, dishonestly converted it to his own use, although he afterwards restored it, the case was held to fall under s. 408, and not s. 409, Penal Code.—8 W. R., Cr., 1.

3. Where a conviction of a person for — was quashed on the ground that he was a partner with the prosecutor.—9 W. R., Cr., 37. Overruled by F. B., who held that a partner dishonestly misappropriating or converting to his own use partnership-property is guilty of — under s. 405 Penal Code.—(F. B.) 21 W. R., Cr., 59.

4. Refusal of a servant receiving money to account for it, or falsely accounting for it, is — under s. 408 Penal Code.—10 W. R., Cr., 28.

5. S. 409 Penal Code does not limit the mode in which a trust arises, whether by specific order or by reason of its being part of the proper duty of a public functionary. Where, therefore, it was proved that the Head Clerk of an office entrusted the management of stamps, with the knowledge and sanction of the superiors, to one of his assistants, the latter was held guilty of — under s. 409 when he made away with the stamps.—13 W. R., Cr., 77.

See Irregularity 12.
Police 7.
Practice (Criminal Trials) 58.
Theft 2, 3.

Criminal Force.

See Amends 8.
Autrefois Acquit 3.
Cumulative Sentences 10, 12.

Criminal Intimidation.

1. Procedure under s. 506 Penal Code for — used against three different persons.—9 W. R., Cr., 30.

2. An intention to intimidate, insult, or annoy any person in possession of a house does not mean to insult or annoy any person in constructive but in actual possession of the premises.—17 W. R., Cr., 47.

See Jurisdiction 480.
Specific Performance. 5.

Criminal Misappropriation.

1. Merely finding a thing and retaining it in possession, without proof of actual conversion, does not amount to — under s. 403 Penal Code.—10 W. R., Cr., 23.

2. A person may commit the offence described in s. 404 Penal Code by dishonestly misappropriating the money entrusted to him, although he does not bring such money to his own use.—11 W. R., Cr., 1; 12 W. R., Cr., 39.

3. A charge of — under s. 403 Penal Code should specify the person to whom the property belonged.—14 W. R., Cr., 13.

4. The — of each separate item of money with which a person is entrusted is a separate offence, and the facts connected with it should form the subject of a separate enquiry.—15 W. R., Cr., 5.

See Endowment 58.
Mortgage 153.
Principal and Surety 27.

Criminal Procedure Code.

See Act XXV of 1861.
,, XV of 1862.
,, VIII of 1869.
,, X of 1872.

Criminal Proceedings.

1. The sanction to a prosecution under s. 169 Act XXV of 1861 must be as to each of several persons charged.—10 W. R., Cr., 24; 15 W. R., Cr., 55.

2. The sanction to prosecute under ss. 169 and 170 should specify the particular act or acts of forgery, and the particular words which constitute the perjury, for which permission to prosecute is given.—10 W. R., Cr., 41; 13 W. R., Cr., 25.

And should not be given before all the evidence is heard and a *primâ facie* case made out.—19 W. R. 183.

3. Under s. 171 the initiative is taken by the party interested; s. 170 contemplates cases in which the Court takes the initiative.—11 W. R. 171.

4. When a Civil Court makes over a case to a Magistrate for investigation, the Magistrate is bound to proceed with the case himself and take evidence.—12 W. R., Cr., 41, 49.

5. The deposition of the Civil Court, setting forth the charge on which it sends a case for investigation by the Magistrate under s. 171 Act XXV of 1861, is a sufficient complaint.—13 W. R., Cr., 45.

6. Where sanction was not given under s. 170 Act XXV of 1861 to prosecute a person criminally for fabricating false evidence, the error was held not cured by s. 426. The sanction given by the Sessions Judge after the case was committed to him and after the prisoner had pleaded to the charge, is not a sanction contemplated by the law.—15 W. R., Cr., 45.

7. When an Appellate Court directs further evidence to be taken by a Subordinate Court under s. 422 Act XXV of 1861, it is competent to the Subordinate Court before which such evidence is given, if any offence against public justice as described in s. 169 is committed before such Court by a witness whose evidence is being recorded therein, to send the case for investigation to a Magistrate under the provisions of s. 171.—(F. B.) 15 W. R., Cr., 64.

8. It would be very undesirable for the High Court, under s. 169 Act XXV of 1861, except under very peculiar circumstances, to entertain in the first instance an application to authorize a prosecution for perjury.—17 W. R., Cr., 46.

9. As a general rule, one of two parties to an impending suit ought not to put the Criminal Law in motion as against the other in matters connected with the suit or

CRIMINAL PROCEEDINGS (*continued*).

if he does so, the Criminal case ought to be postponed until the suit is concluded.—17 W. R., Cr., 46.

10. The words "such sanction may be given *at any time*" in s. 169 Act XXV of 1861 must be construed reasonably so as to mean a time which does not unduly prejudice the party to be prosecuted or put him in a worse position than he was before.—18 W. R., Cr., 62.

11. No appeal lies against a Judge's order sanctioning such prosecution.—*Ib.*

12. The previous enquiry provided for by s. 146 Act X of 1872 before a complaint is taken up, ought not to be made after the accused has been brought before the Court under a warrant.—21 W. R., Cr., 44.

13. The Court declined in this case to say, under s. 469 Act X of 1872, that a conviction was bad because the Judge who tried the case, and the Judge who sanctioned the —, was the same person.—22 W. R., Cr., 16.

14. A Civil Court has no power to order the commitment of persons for offences under ss. 471, 465, and 193 Penal Code without holding the preliminary enquiry required by s. 474 Act X of 1872.—22 W. R., Cr., 52.

15. When once a complaint of an offence which cannot be compounded is before a Magistrate, he is bound (unless proceeding under s. 146 Act X of 1872) to make a complete enquiry and to see that the accused, if guilty, is brought to punishment.—22 W. R., Cr., 83.

16. Under s. 471 Act X of 1872, the Court must first make a preliminary enquiry to satisfy itself that a specific charge coming under the sections mentioned in it ought to be preferred against the accused, before it can either commit the case itself or send the case to the Magistrate for enquiry whether a committal should be made or not. —23 W. R., Cr., 39.

17. Prosecution for a complaint made at a police station does not require the sanction of any Court under s. 468 Act X of 1872.—24 W. R., Cr., 41.

18. No special sanction is needed for the prosecution of a person for giving false evidence in a judicial proceeding. —25 W. R., Cr., 5.

19. It was held to be illegal for a Magistrate to sanction a prosecution under s. 211 Penal Code (for making a false charge) without giving the petitioner an opportunity of adducing evidence to prove that the charge which he made was a true one.—25 W. R., Cr., 10.

20. Where the High Court sanctions a prosecution for perjury, the — must be instituted in the Court having jurisdiction to entertain the charge.—25 W. R., Cr., 14.

21. S. 468 Act X of 1872 does not preclude prosecution of offences referred to in it without the sanction mentioned in it whenever these offences are committed not "before or against a Civil or Criminal Court."—25 W. R., Cr., 33.

22. When — are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused.—25 W. R., Cr., 57.

See Abatement 24.
Charge 5.
Compounding 1, 2.
Damages 8, 10.
Evidence 61, 73.
„ (Estoppel) 36, 74.
False Evidence 18.
Forfeiture 1.
Forgery.
High Court 1, 6, 25*a*, 28, 168.
Irregularity 14, 15, 16.
Jurisdiction 8, 21, 26, 39, 85, 125, 311, 407, 481, 487, 488.
Land Dispute.
Limitation 39.
„ (Act XIV of 1859) 229.
Nuisance 1, 2.
Perjury 2, 3.
Practice (Criminal Trials) 41, 52.
Privy Council 15.
Prosecutor 2, 4.
Public Policy 2.
Registration 116.
Rent 16.
Resistance to Distraint 2.
Special Appeal 28, 161.
Sunday 1, 2.
Tort 2.
Witness 23.

Criminal Trespass.

1. Forcible entry upon land in the possession of another and erection of a building thereon or any other act done with intent to annoy the person so in possesion, irrespective of the question of title to the land, constitute — under s. 441 Act XLV of 1860.—7 W. R., Cr., 28. *See* 9 W. R., Cr., 1; 11 W. R., Cr., 11; 14 W. R., Cr., 25; 24 W. R., Cr., 58.

2. Is part of the offence of mischief committed upon land, as well as of house-breaking by night.—8 W. R., Cr., 54.

3. One member of a joint Hindoo family does not commit — under s. 441 Penal Code by entering the joint family house, but only when he enters the room ordinarily occupied by another member of the family.—15 W. R., Cr., 6.

4. Mere persistence in demand of rent does not amount to — justifying the right of private defence.—16 W. R., Cr., 75.

5. A charge of trespass on one's garden involves an offence under the Penal Code which a Magistrate is bound to enquire into by taking evidence and deciding the case according to law.—18 W. R., Cr., 14.

6. The *bonâ fide* exercise of a supposed right of fishery without payment of rent, where the zemindar had not established his right to receive rent from the parties exercising such right, or to eject them as trespassers, cannot render them liable to a conviction for — under s. 441.—18 W. R., Cr., 25.

See Deputy Magistrate 1.
False Evidence 25.
High Court 133.
Irregularity 4.
Recognizance 4.
Rioting 6.
Right of Private Defence 10.

Crops.

See Appeal 17, 178.
Attached Property 25.
Co-sharers 31*a*.
Damages 28, 75, 90, 109.
Dismissal of Suit or Appeal 1.
Distraint 5, 6, 7.
High Court 79.
Indigo 4, 22.
Jurisdiction 22, 181, 226, 238, 240.
Kubooleut 42.
Limitation (Act X of 1859) 8.
„ („ XIV „) 1, 80.
Master and Servant 11.
Mesne Profits 70.
Mischief 2.
Moveable Property 4.
Occupancy 67.
Possessory Award 9.
Practice (Possession) 91.
Putnee Talook 10, 65.
Registration 83.
Rent 40.
Resistance to Distraint 8.
Special Appeal 55.
Theft 8.
Trees 6.

Cross-Appeal.

No objection arising out of proceedings outside a suit can be entertained by way of —.—12 W. R. 391.

See Mesne Profits 45.
Objections (under s. 348 Act VIII of 1859).
Practice (Appeal) 18, 20, 79, 94.

Cross-Decrees.

1. According to s. 292 Act VIII which is imperative, and gives no discretion, —, whether appealed or not, must be set against one another, the larger of the two decrees being executed for the difference.—W. R. Sp., Mis., 1.

2. In order to admit of a set-off, under s. 209, where there are —, the parties must be the same and the sums due under the decree or decrees must be definite and ascertained. —5 W. R., Mis., 12, 22, 29.

3. S. 209 Act VIII contemplates the case of a cross-decree which the decree-holder is seeking to execute, and not of a cross-decree incapable of execution by lapse of time.—5 W. R., Mis., 16, 43.

4. According to s. 20 Act XIV, a cross-decree must be kept alive by the action of the party entitled under it.—*Ib.*

5. A judgment-debtor can set-off a decree whether the decree-holder intends or not to object, on appeal, to the judgment-debtor's decree.—5 W. R., Mis., 52.

6. S. 209 Act VIII contemplates either — in the same Court or decrees sent to the same Court for execution; so that where A obtained a decree in the Judge's Court against B, another decree of B against A in the Principal Sudder Ameen's Court, not sent for execution, cannot be set-off under this section.—(F. B.) 6 W. R., Mis., 72. *See also* 7 W. R. 480, 8 W. R. 392, 12 W. R. 391, 16 W. R. 303.

Not only decrees *of*, but decrees *in*, the same Court.—17 W. R. 46.

7. The purchaser of a decree against which a cross-decree may be set-off, takes his decree subject to all the equities and liabilities which attach to it, and consequently liable to the provisions of s. 209 Act VIII.—6 W. R., Mis., 73. (*Affirmed by F. B.*) 10 W. R., F. B., 32. *See also* 18 W. R. 442, 19 W. R. 85. *See* 15 W. R. 127.

8. Where A obtained a decree against B but execution was stayed (under s. 209 Act VIII) pending a cross-suit of B against A, and B afterwards sold his right in the cross-suit, it was held that A had still a right to attach the whole of B's decree in execution of his own decree against B.—7 W. R. 219.

9. S. 209 Act VIII relates only to decrees which are in course of execution at the same time. Thus, where in one decree it was expressly stated that execution should not issue until the happening of a certain contingency, it was held that that decree could not be set-off against a cross-decree which was absolute and which was being executed before the contingency happened.—7 W. R. 535.

10. Where a plaintiff's suit is decreed in part and in part dismissed on appeal, he can set-off his costs on the part decreed to him, under s. 209 Act VIII, against defendant's execution for costs on the part dismissed, although he may not have executed his own original decree within the specified time.—9 W. R. 590.

11. Where A applied to have a decree held by his son against B set-off as a cross-decree under s. 209 on the ground that his son held *benamee* for him,—*Held* that the parties to the decrees were not the same.—10 W. R. 450.

12. Where M obtained a decree for arrears of rent against T and T's co-sharers, and T, as guardian of her minor son, held decrees against M, in satisfaction of which decrees M had deposited certain sums of money, which money M then took way in execution of her own decree,—*Held* that the money was in reality taken away from T's minor son, and that if T recouped him, it was a voluntary payment, and she could not sue for contribution from her co-sharers.—11 W. R. 218.

13. Where an order of Court is made with the consent of the holders (S and B) of two—fixing the mode in which a set-off should be made, and its effect is to prevent S from executing his decree without giving credit for B's decree, it would be most inequitable to allow B to execute his decree against S.—11 W. R. 488.

14. Where execution of a decree was stayed under s. 209 Act VIII, pending the decision of a cross-suit,—*Held* that, on the decision of the latter suit, execution should be taken out by the party that had a decree for the larger sum, and for what remained over after deducting the smaller sum.—12 W. R. 212.

15. A got a decree against B, who subsequently got a larger decree against A, which he sold to C. After that A executed his decree, and put up B's decree and bought it himself. C then took out execution against A, who, having unsuccessfully put in a claim under s. 246 Act VIII, brought a suit to have his claim established, and the sale of B's decree to C declared collusive. Both the Lower Courts found that the sale was *bonâ fide*. *Held* that this finding could not be set aside in special appeal, but that when C took out execution, A might apply for a set-off under s. 209. —24 W. R. 299.

See Appeal 82.
Assignment 6, 7, 8, 10.
Costs 67, 94.
Practice (Execution of Decree) 179, 197.
Set-Off.

Cross-Examination.

See Evidence (Admissions and Statements) 41.
,, (Oral) 21.
Irregularity 18.
Practice (Criminal Trials) 56.
Witness 19, 47, 66, 77, 80, 81.

Culpable Homicide (not amounting to Murder).

1. An unpremeditated assault committed in the heat of passion upon a sudden quarrel and ending in an affray in which death was caused, was held to come within Exception 4 s. Penal Code.—1 W. R., Cr., 33.

2. What is necessary to bring a case of murder under the same exception so as to change the offence into —. —W. R., Cr., 29.

3. Where *corpus delicti* is not established, there can be no conviction for — nor under s. 202 Penal Code.—1 W. R., Cr., 29.

4. Intriguing with a sister is sufficient grave provocation to justify a conviction for — as against the brothers who, finding the deceased lying with their sister in the same bed ill-treated him, from the effects of which ill-treatment he died.—4 W. R., Cr., 38.

5. Where a man of full age submits himself to emasculation performed neither by a skilful hand nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of —.—5 W. R., Cr., 7.

6. A conviction on a charge of causing disappearance of evidence of an offence which amounts to — may be good, though there be no proof of who committed the —.—7 W. R. Cr., 22.

7. In a case of riot in which a man was killed, the whole of the members of the unlawful assembly (as well the worsted as the victorious) were held guilty of —.—7 W. R., Cr., 103.

8. In a case in which a husband killed his wife and her paramour when engaged in criminal intercourse with each other,—*Held* that he was guilty of — and that he ought to be treated with lenity.—8 W. R., Cr., 38.

9. A person, who, while smarting from a severe blow from a stick in the midst of a sudden fight, and possibly apprehensive of further violence, finding a knife at hand, took it up and in the *mêlée* inflicted, the wound which caused the death of the deceased, was held guilty of —. —24 W. R., Cr., 48.

See Assault 4.
Cumulative Sentences 5.
Grievous Hurt 1, 3.
High Court, 152.
Jurisdiction 449.
Jury 17.
Murder 3, 5, 7, 11, 14, 16, 22, 24, 31.
Practice (Criminal Trials) 32.
Suttee.

Cumulative Sentences.

1. On counts subordinate to the higher count cannot be upheld.—4 B. J. P. J. 121. *See also* 3 W. R., Cr., 13 (4 B. J. P. J. 572); 9 W. R., Cr., 12.

2. *Quære* whether — under ss. 454 and 380 Penal Code are legal.—8 W. R., Cr., 19.

3. A double sentence for theft and mischief is illegal and improper.—6 W. R., Cr., 5; 8 W. R., Cr., 31.

4. Sentences of imprisonment may be accumulated beyond 14 years, notwithstanding s. 46 Act XXV of 1861, which refers only to sentences passed simultaneously or passed upon charges tried simultaneously.—7 W. R., Cr.. 1.

5. A sentence for culpable homicide not amounting to murder renders unnecessary a separate sentence for being a member of an unlawful assembly.—7 W. R., Cr., 13.

6. False Charge under s. 211 Penal Code and False Evidence under s. 193 are not cognate offences, nor parts of the same offence, but may be punished separately.—7 W. R., Cr., 59.

7. Rioting armed with deadly weapons and stabbing are distinct offences and punishable separately under ss. 148, 149, and 324.—7 W. R., Cr., 60. *See also* 5 W. R., Cr., 19. *But see* 10 W. R., Cr., 63.

8. Kidnapping and selling for purposes of prostitution are punishable separately.—7 W. R., Cr., 104.

9. A sentence of *transportation* for two periods each of seven years, one to commence after the expiration of the other, is not warranted by s. 46 Act XXV of 1861; that section allowing — only when the penalties consist of *imprisonment*.—11 W. R., Cr., 10.

10. Using Criminal Force under s. 353 Penal Code and rescuing a prisoner from lawful custody cannot be punished separately.—12 W. R., Cr., 2.

11. Where — under ss. 183 and 353 Penal Code were held not contrary to s. 71.—14 W. R., Cr., 19.

12. Where — under ss. 143 and 353 Penal Code were upheld.—16 W. R., Cr., 70.

See Dacoity 3.
Escape 1.
Forgery 24.
Housebreaking by Night 2.
Kidnapping 6, 10.
Punishment 8.
Right of Appeal 3.
Rioting 1, 4.
Theft 10.
Unlawful Assembly 1.
Whipping 4, 5.

Curator.

1. Effect and objects of Act XIX of 1841.—6 W. R., Mis., 53.

2. An informal citation issued by a Judge without a solemn declaration by complainant and without preliminary enquiry under s. 3 of the same Act, is cured by the party complained of appearing and opposing the application on the merits.—*Ib.*

3. The Judge's error in drawing the issues gives the High Court no jurisdiction to interfere with an order as to which, by s. 18 of the same Act, neither appeal nor revision is allowed.—*Ib.*

See Hindoo Widow 74.
Land Dispute 30.

Custom.

1. No — giving one man rights of serfage over another, can be enforced.—Sev. 60-2.

2. The Court refused to admit a right to make *dams* in a stream in conformity to immemorial usage, there being no sufficient evidence of any such immemorial usage.—Sev. 506.

3. Litigation is a test, but not the sole proof, of the existence of a —.—5 W. R. (Act X) 42.

4. A question of — is a question of fact and cannot be interfered by the High Court in special appeal.—10 W. R. 153, 13 W. R. 420.

5. A — is a rule which, in a particular family or in a particular district, has from long usage obtained the force of law. It must be ancient, certain, and reasonable, and, being in derogation of the general rules of law, must be construed strictly.—(P. C.) 26 W. R. 55.

See Adhikaree 2.
Benamee 10.
Caste 8.
Churs 57, 75, 81.
Ejectment 41.
Evidence 11, 31.
Family Custom.
Hidden Treasure 8.
Hindoo Law 1, 12, 15.
" " (Inheritance and Succession) 37, 88, 93, 94.
Hoondee 3, 13, 18.
Husband and Wife 38, 48.
Interest 26.
Jurisdiction 87, 496.
Kolachar.
Lease 50.
Limitation 49.
Maintenance 37.
Marriage 1, 21, 33, 39.
Measurement 5.
Mercantile Usage.
Onus Probandi 58, 128, 238, 240.
Pre-emption 4, 8, 15, 26, 30.
Primogeniture.
Principal and Agent 4.
Putnee Talook 73.
Rent 108.
Service Tenure 5.
Timber 3, 4, 5.
Tipperah 4.
Transferable Tenure 2, 4, 5, 7, 8, 11.

Cuttack.

In — the Mitacshara law generally prevails.—2 Hay 205 (Marshall 317).

See Attgurh Raj.
Marriage 1.
Permanent Settlement 2.
Primogeniture 2.
Surburakaree Tenure 1.

Cyprès.

See Will 68.

Dacoity.

1. A previous acquittal of a person on a charge of — is no bar to his conviction on a fresh charge of retention of stolen property obtained by the same —. The prisoner on the first indictment could not have been convicted by proof of the facts contained in the second indictment.—1 R. J. P. J. 121.

2. Where four out of five defendants took certain property believing the other defendant to have a fair claim of right to it, the offence was held not to be —.—W. R. Sp., Cr., 8 (2 R. J. P. J. 114).

3. A person convicted of and sentenced for — cannot also be convicted of and sentenced for receiving or retaining the stolen property thereby acquired.—W. R. Sp., Cr., 27 (2 R. J. P. J. 278); 1 W. R., Cr., 48; 13 W. R., Cr., 42. *See also* 11 W. R., Cr., 12 (*note*).

4. A person guilty of — with murder is punishable under s. 396 Penal Code, and not separately for murder under s. 302 and for — under s. 395.—W. R. Sp., Cr., 30.

5. Where persons are found, shortly after the commission of a —, with portions of the plundered property in their possession, the presumption of law is that they were

DACOITY (*continued*).

participators in the — and not merely receivers.—3 W. R., Cr., 10 (4 R. J. P. J. 568); 5 W. R., Cr., 66.

6. The definition of — in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law.—3 W. R., Cr., 60.

7. Nature of evidence requisite in a case of —.—5 W. R., Cr., 51.

8. A sentence of fine only is illegal in a case of —.—6 W. R., Cr., 54.

9. The refusal of a person to join in a — does not imply a knowledge on his part of the commission of that offence or render him liable to punishment, under s. 176 Penal Code, for intentional omission to give information for the purpose of preventing the commission of an offence.—7 W. R., Cr., 29.

10. Where a body of men attack and plunder a house, the mere fact of the proprietor's family having made their escape a few minutes before the robbers found an entrance, does not take that offence out of the purview of s. 395. It is sufficient for the application of the section that the robbers cause or attempt to cause the fear of instant hurt or of wrongful restraint.—7 W. R., Cr., 35.

11. Where, in consequence of a discrepancy between the finding and sentence in a case of —, the finding was amended by substituting s. 395 for ss. 397 and 511 Penal Code.—7 W. R., Cr., 49.

12. In order to establish a charge under s. 400 Penal Code, it is necessary to make out that there existed at the time specified a gang of persons associated together for the purpose of habitually committing —, and that the accused was one of the gang.—23 W. R., Cr., 18.

See Arrest 8.
Fine 3.
High Court 144.
Housebreaking by Night 1.
House Trespass 2.
Hurt 1.
Stolen Property 9.
Summary Trial 2.

Dakhilas.

See Enhancement 208.
Evidence (Documentary) 36, 45, 113.
Hindoo Law (Coparcenary) 29.
Mesne Profits 59.
Under Tenures 7.

Damages.

1. A suit for — will not lie against a present proprietor for injury done to land during the time of a former proprietor.—W. R., F. B., 17; 1 Hay 118.

2. Mode of estimating — for breach of contract by ryot to cultivate indigo.—5 W. R., S. C. C. 10 (S. C. C. 1); 17 W. R. 94.

3. Measure of damages for ditto.—S. C. C. 11.

4. A farmer, without express authority from the zemindar, cannot sue a ryot for — for the value of fruit-trees cut down by the ryot without the leave and license of the farmer.—S. C. C. 14.

5. The cutting down of trees by a tenant without the leave and license of the owner, is an act of voluntary waste rendering the tenant liable in an action for —.—S. C. C. 17.

6. Suit for — may be brought before the 20th October for breach of contract to sow indigo on or before that date.—S. C. C. 24.

7. Reversioner cannot sue for — until the widow's (the life tenant's) death.—S. C. C. 26.

8. Plaintiffs put in possession of land under an Act IV award cannot recover — from the defendants in respect of their indigo not sown on the land by reason of defendant's appeal from the Magistrate's order to the Sessions Court.—S. C. C. 31.

9. When — to be regarded as a penalty and not as liquidated —.—S. C. C. 48. *See* 2 Hay 391 (Marshall 386).

10. The defendants having been punished criminally for the act complained of, exemplary or vindictive — were held inadmissible.—1 Hay 162.

11. Right of action for — for breach of contract not assignable.—1 Hay 482.

12. When parties to a contract fix a sum as the amount of — for its breach, a Civil Court, in a suit brought after the occurrence of such breach, will enquire into the actual damage, but will in no case award to the plaintiff a larger sum than that fixed by the parties themselves.—2 Hay 413.

13. The — mentioned in s. 10 Act X of 1859 are not penalties invariably to be decreed against persons withholding receipts of rent, but are to be ascertained by an actual enquiry into the circumstances of each case.—2 Hay 516.

14. In a suit for an excessive distress, the Judge awarded to plaintiff — equivalent only to the actual loss sustained,—*Held* that he had a discretion with respect to the amount of the —, and that there was no ground for interfering with his assessment of the — on special appeal.—Marshall 495.

15. In a suit for the non-delivery of goods agreed to be sold by the defendant to the plaintiff in a case where no money has passed, the measure of — is in general the difference (if any) between the agreed price and the market value on the day when the goods ought to have been delivered.—2 Hay 647 (Marshall 542).

16. Cannot be recovered under s. 2 Act VI of 1862 (B.C.) unless specially alleged and claimed.—1 R. J. P. J. 116 (Sev. 189).

17. A Judge cannot under ss. 88 and 96 Act VIII of 1859 award compensation by a separate and subsequent order for — not originally claimed or included in his decree.—Sev. 24.

18. A joint owner is liable to be sued for — if he secretes the estate papers and thereby deprives his joint owners of the means of recovering their dues.—W. R. Sp. 218.

19. A suit for — not exceeding 500Rs. is within the jurisdiction of a Small Cause Court, notwithstanding it involves a question of right. No special appeal lies in such a case.—W. R. Sp. 237.

20. How to be estimated for breach of contract to cultivate indigo.—W. R. Sp. 251 (L. R. 20). *See also* 12 W. R. 533.

21. Special — not necessary to be proved in a case of slander and assault.—W. R. Sp. 302 (L. R. 84). *See also* 18 W. R. 531.

But necessary to be proved in a suit to recover actual loss sustained by plaintiff by defendant putting up an embankment, where there is no element of insult, annoyance, or malice.—25 W. R. 547.

22. Where one of two co-sharers in a property violates a secret arrangement between them by selling to a stranger, the other cannot claim a specific penalty, but has his remedy in an action for —.—W. R. Sp. 337 (L. R. 112).

23. Striking an average on the amounts stated by several witnesses is not a proper mode of assessing — done to crops by cattle.—W. R. Sp. 363 (L. R. 136).

24. In a suit for — for loss of cultivation by the cutting of a bank of a reservoir in plaintiff's land, the plaintiff is entitled, not merely to the rent of the land, but also to the profits of cultivation W. R. Sp. 365 (L. R. 138).

25. Full — commensurate to the injury and annoyance caused, should be awarded for assault committed without provocation, though there has been no serious personal injury or vindictiveness.—W. R. Sp. 370 (L. R. 143).

26. The award of additional — under s. 2 Act VI of 1862 (B. C.) is not imperative, but discretionary; the Court being required to look to the condition of the parties, and the particular hardship inflicted.—W. R. Sp. (Act X) 22. *See also* W. R. Sp. (Act X) 73, 84 (2 R. J. P. J. 366).

27. The refusal of a Court to award — under the same section is not a ground for special appeal.—W. R. Sp. (Act X) 68.

28. Claim to — not barred by reason of resistance of unlawful attachment (P. C.) 5 W. R., P. C., 91 (P. C. R. 644).

29. When ordinary — may be recovered on failure to prove special —.—*Ib.* *See also* 25 W. R. 547. *But see* 11 W. R. 143.

30. Where the Privy Council assessed — themselves with costs in proportion.—*Ib.*

31. When two parties have made a contract which one of them has broken, the — which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either to arise naturally, *i.e.* according to the usual course of things, from such breach of contract itself, or to have been in the contemplation of both parties at the time they made the

DAMAGES (*continued*).

contract, as the probable result of the breach of it.—1 Hyde 128.

32. When a suit is one for liquidated — and not for rent.—1 W. R. 2.

33. S. 2 Act VI of 1862 (B.C.) cannot have retrospective effect.—1 W. R. 100 (3 R. J. P. J. 188).

34. Under the above section — how awardable.—*Ib.*

35. In a suit to recover — for trees cut down contrary to terms of lease, the farmer and his surety are liable, but not the purchasers of the trees from the farmer.—1 W. R. 156.

36. To cargo and vessel which sank while under attachment.—1 W. R. 158.

37. S. 348 Act VIII is wide enough to empower an Appellate Court on cross-appeal to re-open the whole case and assess — for an assault against defendants who had been acquitted in the original suit and were not parties to the appeal.—1 W. R. 229.

38. The amount of — awarded for value of trees cut down in good faith is left to the discretion of a Civil Court and is not a matter for interference in special appeal unless assessed upon a wrong principle.—1 W. R. 238.

39. Under s. 10 Act X of 1859 the power to award — for receipts for rent withheld is only discretionary as regards the amount to be awarded; but under Act VI of 1862 (B. C.), the power to award — for arrears of rent is entirely discretionary.—1 W. R. 290 (3 R. J. P. J. 336).

40. Awarded under s. 10 Act X for giving a receipt which did not specify payment of any rent. 1 W. R. 318.

41. Before awarding — for arrears of rent under s. 2 Act VI, the Court should find whether, when the rent was demanded, it was withheld without just reason or not.—1 W. R. 343 (3 R. J. P. J. 350).

42. Not recoverable for bursting of a *bund* if it was made in a lawful manner and if the breach was not owing to any fault of defendant.—2 W. R. 43.

43. Where — are sought on the ground of omission to give notice of sale under s. 216 Act VIII of 1859, plaintiff is bound to prove omission.—2 W. R. 60.

44. Cannot be claimed under s. 252 Act VIII on the ground of a Judge's omission, at the time of sale, to give notice of the amount of the decree for which the property is to be sold, such omission not amounting to an irregularity within the meaning of the section.—*Ib. See also* 8 W. R. 415.

45. S. 192 Act VIII only applies to suits for damages for breach of contract, and does not authorise — for refusal of a mother to comply with an order of Court to deliver up her daughter.—2 W. R. 76.

46. A ryot is liable to landlord for — for permanent injury to land by loss of earth to make bricks.—2 W. R. 157. *See* 23 W. R. 298.

47. The objection as to the measure of — assessed by the Lower Apellate Court, is not admissible in special appeal. 2 W. R. 235; 10 W. R. 164. 202; 11 W. R. 371.

48. Not awardable, under s. 2 Act VI of 1862 (B. C.), in in a suit in which the plaintiff's allegation as to rate of rent has been disbelieved, and a decree given at rates admitted by the defendant.—2 W. R. (Act X) 11.

49. The jurisdiction of a Small Cause Court in a suit on a kubooleut for — not exceeding 500Rs., is not affected, because — exceeding that sum may be payable under the same kubooleut.—3 W. R., S. C. C., 14 (S. C. C. 148).

50. A lessee may sue a third party for — for injury sustained by reason of excavations made by the defendant on lands leased out by the plaintiff to a lessee.—3 W. R., S. C. C., 20 (S. C. C. 161).

51. A Small Cause Court cannot take cognizance of a suit for — under 500Rs. when there is no allegation in the plaint of special damage of a pecuniary nature. A special appeal lies in such a case.—4 W. R. 7.

So also as to a suit for — for an assault.—12 W. R. 477.

But where actual pecuniary damage has resulted, the Small Cause Court has jurisdiction, and no special appeal will lie.—18 W. R. 434, 22 W. R. 395.

And plaintiff may join in the suit another part of the claim to — which may not be cognizable by a Small Cause Court.—22 W. R. 395.

52. How to be regulated in a breach of indigo contract, where the failure has not been shown to be owing to accident.—4 W. R. 62.

53. Cannot be claimed as against a trespasser by a person who, through delay in assessing rent on resumed land, fails to obtain rent from the date of resumption.—4 W. R. 69, 6 W. R. 92.

54. In assessing — caused by a wrongful act committed by the defendant, the injury sustained by the plaintiff should alone be considered, and not the punishment of the defendant.—5 W. R. 107. *See* 12 W. R. 329.

55. Not awarded for a charge of abetment of riot and murder, which was dismissed for want of proof.—5 W. R. 134.

56. Where — for an assault, when found beyond the means of the defendant, were reduced on condition of his tendering a written apology.—6 W. R. 95.

57. Under s. 10 Act X — are recoverable only in respect of money actually paid as rent.—6 W. R.(Act X) 79.

58. The affixing in the Principal Sudder Ameen's Court of a notification of sale in execution of a decree of the Small Cause Court, was held to be no irregularity in the sale by reason of which — could be recovered under s. 252 Act VIII. -6 W. R. (C. R.) 11.

59. A suit for — will lie for breach of contract or fraudulent omission by defendant to certify an adjustment of a decree under s. 206 Act VIII, in consequence of which, on an execution fraudulently issued against plaintiff, his property was seized.—6 W. R., C. R., 20, 13 W. R., F. B., 69.

But the decree-holder's breach of contract is not actionable without consequent accrual of loss to the debtor.—13 W. R. 147.

60. The Secretary and Manager of a Government Aided School was held entitled to sue for — against the owner of the school premises for breaking down the building and removing the materials belonging to plaintiff.—6 W. R., C. R., 21. *See* 7 W. R. 476.

61. A suit will lie for — sustained by a lessee by his lessor's breach of contract to put him in possession of a portion of the property of which he granted the lease.—7 W. R. 22.

62. A claim for — in respect of injury sustained by goods while under attachment in execution of a decree which was afterwards set aside, is not a matter to be disposed of under s. 11 Act XXIII of 1861, but must be made the subject of a separate suit.—7 W. R. 45.

63. A suit will not lie between joint-owners of an undivided estate for — sustained by the sale of the estate at an inadequate price in consequence of defendants' default in paying their share of Government revenue.—7 W. R. 72, 25 W. R. 150.

64. Where uncertain — result from a breach of contract for which a specified sum was stipulated to be paid, such sum will be treated as liquidated —.—7 W. R. 303.

65. A party is not liable to — for an attachment, even though it be wrongful, made under s. 233 Act VIII by order of a Court.—7 W. R. 355, 9 W. R. 133. *But see* 12 W. R. 329 and 14 W. R. 120.

Nor for an illegal attachment under s. 234 unless the party or his servants personally interfered and directed the action of the Court-officer.—24 W. R. 139.

66. A land-owner is not liable for damage caused to neighbouring lands where there is no proof of wrongful act or omission on his part.—7 W. R. 448.

67. Where cause of action is established, but the first Court has assessed the — too high, the Lower Apellate Court must give some — and not dismiss suit altogether.—8 W. R. 44.

68. The inhabitants of a village who applied to a Magistrate to open a closed bund are not liable for — if the Magistrate should exceed his jurisdiction.—8 W. R. 111.

69. Before a tenant can obtain a decree for — on the ground of illegal distraint, he must prove what loss he has actually sustained.—8 W. R. 219.

69*a*.—The suit of a plaintiff who comes into Court with an exaggerated statement of injury sustained is rightly dismissed *in toto*, although some injury is proved.—8 W. R. 476. *But see* 15 W. R. 465.

70. If a plaintiff sues or makes an application, maliciously or without probable or reasonable cause, to a Court of competent jurisdiction, to seize property of another person as the property of his judgment-debtor, he may be liable to — in an action; so likewise if he applies for an injuction; but not where there is no *mala fides*.—9 W. R. 133. *See also* 13 W. R. 3.

71. A suit for so-called — on the ground that defendants

DAMAGES (*continued*).

had agreed to pay — in the event of their leaving plaintiff's bazaar to sell in another, can be maintained, being an action in contract, but the sum stipulated to be paid is only a penalty.—9 W. R. 212.

72. A plaintiff is not entitled to recover as — anything beyond what he has actually sustained.—*Ib.*

73. Where plaintiffs with separate interests obtain —, the decree should not be a joint decree for a lump sum, but should apportion the —.—9 W. R. 299.

74. A father, as guardian of his minor son, can sue to recover — for personal injuries received by the son.—9 W. R. 327.

75. A Small Cause Court has jurisdiction in a suit for — under 500Rs. sustained by the illegal removal of crops, and no special appeal lies.—9 W. R. 336.

76. An Apellate Court has power to award — under s. 3 Act VI of 1862 (B. C.) even when there is no appeal on the part of the defendant on that point.—10 W. R. 339.

77. A suit for mesne profits is a suit for — within the meaning of s. 6 Act XI of 1865, and if for not more than 500Rs., is cognizable by a Small Cause Court and no special appeal will lie.—10 W. R. 375.

78. S. 96 Act VIII allows by implication the power of bringing a suit for —, leaving that remedy to those who do not wish to take advantage of the remedy given them by the Act.—11 W. R. 143.

79. Special damage need not be proved, but may be presumed, when a person's estate is sold away from him.—11 W. R. 199.

80. When an appeal is preferred on the ground that the — awarded are excessive, it is not enough to show that the — have not been assessed on a right principle.—11 W. R. 520.

81. A Magistrate who without reasonable cause delays proceeding with the trial of persons whom he keeps in jail, is liable, notwithstanding Act XVIII of 1850, to an action for — if the prisoners are eventually acquitted.—11 W. R., Cr., 19.

82. In estimating — for a malicious prosecution, a Civil Court is not necessarily wrong in taking into consideration the plaintiff's feelings.—12 W. R. 89.

83. Where a lessee sues for — on account of dispossession, on the allegation that the lessors have collected the year's rents except a certain sum, it is not for the Judge to assess the right measure of — but to find on the allegation.—12 W. R. 198.

84. Where it was found as a fact that a number of persons, in pursuance of a common object, plundered the property of A, it was held that all that was necessary in a suit by A for — was to identify the persons who were present co-operating in that common design, and that each and every person co-operating to any extent in the plunder was responsible to recoup A for the loss he sustained.—(P. C.) 12 W. R., P. C., 38.

85. Where two witnesses identified some of the defendants as having been present at the plunder, and these defendants did not avail themselves of the opportunity they had of exculpating themselves by their own evidence, the Court was held justified, by their reluctance to give evidence, in relying on the unopposed evidence of the two witnesses —.—(P. C.) *Ib.*

86. An attachment without a probable cause evinces malice, and — should be in the nature of a penalty as well as of compensation.—13 W. R. 3.

87. Act XVIII of 1850 does not protect a Magistrate against personal liability for a misconstruction of the law, unless his proceedings have been in other respects regular, and his view of the law such as a reasonable and careful man might take.—13 W. R. 13.

But whether he acts *bonâ fide* or not, a Magistrate is not liable for — if he acts judicially and with jurisdiction.—16 W. R. 63.

88. The Government and its officers are just as much liable in — for illegally appropriating or destroying property for the purpose of adding to the convenience of the public, as is a private individual who appropriates or destroys property for his own convenience.—*Ib.*

89. Where money is actually paid as rent and the receipt is withheld, the case is not one of *injuria sine damnis*, but the Court may award — not exceeding double the amount paid as rent.—13 W. R. 391.

90. A person may claim — as against the undisputed owners of the land, for the value of crops taken away, which had been raised by him on the land whereof he was at the time in lawful possession.—14 W. R. 41.

91. In a suit for malicious prosecution, a Civil Court, in awarding —, is not limited to the amount mentioned in s. 270 Act XXV of 1861.—14 W. R. 443.

92. A false charge leading to a party's being obliged to furnish bail causes a loss of reputation for which an award of 20Rs. as — was held not unreasonable.—15 W. R. 85.

93. In a contract where the intention was that plaintiff should from time to time give defendant notice of the articles of wood-work wanted, — for breach of contract can only be sued for to the extent of the wood not supplied according to order.—15 W. R. 217.

94. A decree-holder should be reimbursed — for the time he is kept out of possession by the wrongful act of another, whether his claim for subsequent — be made in the execution of the first decree or in a regular suit.—16 W. R. 240.

95. Where a decree is for the delivery of moveable property and states the amount to be paid as an alternative if delivery cannot be had, the goods must be delivered if capable of delivery, but if not capable of delivery, then assessed — must be paid.—*Ib.*

96. In a suit for — for abuse and assault, plaintiff's position should be considered with a view to the compensation being commensurate with the injury, but not for giving a decree which defendant can never satisfy.—17 W. R. 280.

97. A suit to recover money as — measuring the loss to which plaintiff was put by having to pay on behalf of defendant money which defendant had agreed to pay out of the purchase-money in order to save from sale in execution of a decree an estate which plaintiff had purchased from him, is cognizable by a Small Cause Court from whose decision no special appeal lies.—17 W. R. 446.

98. A suit to recover money paid under a fraudulent concealment of the fact that defendant was engaged as mookhtar for an adversary, and on a fraudulent misrepresentation that defendant was conducting plaintiff's case, is substantially a suit for — for injury sustained by such concealment and misrepresentation, and is cognizable by a Small Cause Court.—18 W. R. 128.

99. It is not for the public benefit that where two parties knowingly deal with the sale and purchase of property of infants, one of the parties (the purchasers) who obtain possession in a manner calculated to injure the infants should be able to sue the other party (the vendors) for —. The Privy Council even refused to give costs to either party, considering them both *in pari delicto*.—(P. C.) 18 W. R. 230.

100. May not always be adequately measured by interest at the bazaar rate, but should depend upon the circumstances of the case.—18 W. R. 337.

101. Mere verbal abuse without consequent injury will give no claim to —.—18 W. R. 531.

102. An action for — on account of threatened assault and defamation of character ought not to be dismissed because of the absence of the plaintiff; but if such absence renders it difficult for the Court to assess the —, the Court will be justified in giving less — than it otherwise might give.—21 W. R. 50.

103. Where plaintiff, having agreed to assign to defendants for a consideration certain arrears of rent due to him, brought a suit in which he tendered the *kubala* of assignment and claimed the consideration money with interest,—*Held* that he had misconceived the shape in which his suit was brought, and that, as his claim was purely for money, he should have sued for — for breach of contract.—21 W. R. 433.

104. An action to recover from defendant money collected from a landed estate charged with the payment thereof under an instrument to which defendants had not been made parties, was held to be a personal action for — within the meaning of s. 6 Act XI of 1865, in which no special appeal lay.—22 W. R. 298.

105. The expression "taken into account" in s. 308 Act X of 1872 means that the compensation awarded is to be taken into consideration by the Court in a subsequent civil suit, and not that it is to be afterwards deducted from the — awarded.—22 W. R. 336.

106. Persons accepting an invitation to an entertainment at their neighbour's house, and afterwards failing to attend,

See Above.

DAMAGES (*continued*).

are not liable for —, so as to recoup the entertainer for the price of the food unconsumed on account of their absence. —23 W. R. 417.

107. In a suit for — for non-delivery of goods (*kulaye*) sold, where the contract was to deliver by weight, the weighment taking place in the seller's own premises,—*Held* that, as plaintiff did not apply for delivery, the seller-defendants were not, under s. 93 Act IX of 1872, bound to deliver the goods.—24 W. R. 178.

108. Where parties have entered into several different covenants with an agreed sum as a penalty in the event of the non-performance of any of those covenants, if the breach of these several covenants can be properly measured in —, the Court should reject the penalty clause, and allow the party suing for the breach of any one of such covenants to recover only the — which he has actually sustained.—24 W. R. 358.

109. A suit to recover the value of produce carried off without plaintiff's consent from his land, which land had been forcibly retained in the cultivation of defendant No. 1 assisted by defendant No. 2, was held to be a suit not for rent but for —.—24 W. R. 380.

110. A plaintiff was held entitled to maintain the present suit for — after having recovered — in a previous suit on account of the same, or rather similar cause of action, where the — now sued for could not have been included in the previous suit, because they had not at that time been incurred.—24 W. R. 471.

111. Where plaintiffs agreed to supply defendant with certain marketable goods (gunny bags) at specified periods, and a breach of that contract was committed by defendant in not accepting the goods which plaintiffs were prepared to deliver at three of those periods, the ordinary rule as to measure of — in such cases was followed, *viz.* to charge defendant with the difference between the contract-price and the market price at the time of the breach.—(O J) 25 W. R. 273.

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See Hindoo Law (Inheritance and Succession) 7, 30, 56, 63, 112.

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,, ,, (Migration) 5.
,, Widow 58, 71, 78, 92, 98, 104.
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See Hindoo Law (Inheritance and Succession) 108, 114.
Streedhun 13.

Dayatutwa.

See Hindoo Law (Inheritance and Succession) 114.
Streedhun 13.

Deaf and Dumb.

S. 186 Act X of 1872 was held not to apply to the case of an accused person who was —, in which the Deputy-Magistrate who tried and convicted him considered that the accused did not understand the proceedings, whereas the Magistrate to whom the case was referred considered that he did.—19 W. R., Cr., 37. *See also* 22 W. R., Cr., 35 (*two cases*), 72.

See Gift 5.
Hindoo Law (Inheritance and Succession) 74, 108.

Death.

According to Hindoo Law, a person not heard of for 12 years or more, is to be presumed dead.—2 Hay 628, 10 W. R. 484. *See* 8 W. R. 421.

See Abatement 9.
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Debentures.

See Municipal Debentures.

Debtor and Creditor.

1. Where a defendant shows *bona fides* by offering to pay anything like a fair proportion of his debt, reasonable time will be granted to enable him to pay the residue.—1 Hyde 98.

2. *Quære.*—Whether the principles of equity declared by the Statutes 13 Eliz. c. 5 and 27 Eliz. c. 4 are in force in India.—1 W. R. 41. *See* (O. J.) 22 W. R. 60.

3. A creditor innocently holding property in pledge for the payment of a debt without notice of his debtor being a *benamee* owner for others, is entitled to maintain his lien and the property in satisfaction of the debt.—1 W. R. 36.

4. When *burats* or assignments of rent are made in satisfaction of a debt and accepted by the tenants, the creditor is bound to give the debtor notice of non-payment within a reasonable time.—5 W. R. 230.

5. Where a testator made a devise of his property among his several heirs and kinsfolk and directed in the meantime that the property be in the hands of a manager in order to the gradual payment of his debts, and the manager was after a time removed by order of Court and the devisees put in possession of their several shares, the devisees were held bound to answer any suit that might be brought by the testator's creditors according to their liability, but without such suit no attachment can be maintained on the payment of the debts sued for.—8 W. R. 276.

6. Where a creditor sues some of the persons jointly liable to him under a note or bond, and takes another bond from the rest for what he considers to be their share of the debt, he does not discharge the latter from their liability to contribute according to the shares in which they are liable among themselves, nor does his transaction with them (they not being sureties) destroy the joint liability.—22 W. R. 193.

7. Where a debtor sells goods to his creditor and requests that a portion only of the price should be appropriated to part-payment of existing debts and the remainder held against the price of goods to be afterwards purchased by the debtor from the creditor, such request is not binding on the creditor without his consent.—22 W. R. 209.

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„ Widow 119.
Limitation 215.
Occupancy 75.
Onus Probandi 171.

Declaratory Decree.

1. Reversioner may sue for — on alienation by Hindoo widow, (F. B.) W. R., F. B., 165. *See also* 4, 32, 42, 46 *post*. *See* 8 W. R. 155, 12 W. R., 26.

2. In a suit in which Government was not represented, the High Court held that the Lower Court was wrong in giving the defendant a — authorizing him to erect a temple on certain public lands, and struck such order out of the decree.—L. R. 14.

3. A — was given under s. 15 Act VIII in favor of plaintiff's (a reversioner's) title in a case where a false state of facts had been set up by the defendants in collusion with the immediate heirs to the manifest injury of the plaintiff's title, and it was of vital importance to the plaintiff that his title should be cleared whilst the evidence for that purpose was available to him.—Sev. 633.

3*a*. A suit will not lie under s. 15 Act VIII for the declaration of contingent and not existing rights.—2 Hay 608, 6 W. R. 1, (P. C.) 23 W. R. 314. *See* 12 W. R. 26.

4. A suit for a — under s. 15 Act VIII is premature on the part of a reversioner during the lifetime of the widow, the reversioner's title being contingent on the death of the widow.—1 W. R. 219. *See* 16 W. R. 52.

5. In a suit brought on the ground of an existing right of inheritance for immediate possession and mesne profits, by setting aside an adoption, the Court will not allow the form of action to be changed and proceed to decide whether (the claim for possession on the ground of an existing right being abandoned) a — may not issue for setting aside the adoption, but will, on failure of right to immediate possession, dismiss the suit.—6 W. R. 1.

6. According to s. 15 Act VIII, a — can be issued only in a suit brought to obtain such—.—*Ib.*

7. S. 22 Act XII of 1841 does not apply to a suit for a declaration of plaintiff's title in right of inheritance as against the other members of the family.—6 W. R. 38.

8. Where, notwithstanding defendant's admission that plaintiff is in joint possession, the latter goes on with a suit to obtain a declaration of sole title and sole possession and fails to prove his case, he is not entitled to a decree founded on joint possession.—6 W. R. 311.

9. A — ought only to be passed under s. 15 Act VIII where some injury appears so probable as to lead to the conclusion that, unless stayed by the —, the inchoate or threatened injury is inevitable.—7 W. R. 96.

10. An unsuccessful claimant to joint family property about to be sold in execution is entitled, in a suit brought for the purpose, to a — to the extent of his rights and interests in the property, notwithstanding he has asked for more than he is entitled to.—7 W. R. 161.

11. Where plaintiff sues to recover possession under a lease which expires before decree, he can only obtain a — as to his right to possession up to date of such expiry.—7 W. R. 248.

12. It is discretionary with Courts whether they will give a —or not.—8 W. R. 64. *See also* 9 W. R. 380, 463; 11 W. R. 466, 543; 19 W. R. 32, (P. C.) 133, 419.

But after this discretion has been already exercised under s. 15 Act VIII by a Court of competent jurisdiction, it cannot be interfered with on appeal upon a decision which does not affect the merits.—13 W. R. 175.

12*a*. Where a plaintiff might have gone before a competent authority to have a *thakbust* map rectified, the Court refused him a — that a certain boundary marked in the map was erroneous.—8 W. R. 64. *See also* 10 W. R. 254, 21 W. R. 134.

13. Parties not proving possession and not entitled to consequential relief may yet, under s. 15 Act VIII, obtain a decree declaring them rightful owners.—8 W. R. 341.

Confirmed by P. C. so far as regards possession, but reversed so far as regards the — on the ground that the prayer of the plaint that certain deeds might be set aside was a prayer for substantive relief.—(P. C.) 21 W. R. 340. *See also* 22 W. R. 438.

14. Where a plaintiff sues for a declaration that a deed is valid, and fails to make out his case, the Court should merely state that it sees no ground for interference under s. 15, and not proceed to declare the deed invalid.—9 W. R. 104.

15. In a suit for a declaration of right, where the right ceases pending the suit, plaintiff is not entitled to a decree; and a — of title will not be given when plaintiff's claim would have been barred by limitation, had he sued for possession.—9 W. R. 131.

16. A *bonâ fide* purchaser at an execution sale of a transferable tenure, is entitled to sue for a declaration of title and possession, though he may not have registered his name in the zemindar's sherista.—9 W. R. 279.

17. A recital in a bond that the money borrowed by a Hindoo widow was given for the performance of her husband's *shrad* is no evidence of the fact, and no — is needed to show that the bond was not given for the purpose specified.—9 W. R. 285.

18. In a suit brought by reversionary heirs to declare that the property standing in the name of defendant had been purchased by the ancestor in his name *benamee*, it was held that there was no ground for a —.—9 W. R. 286.

19. A — that defendant is holding at a certain rate of rent before any rent is in arrear, does not compel payment at that rate without a fresh suit.—9 W. R. 292.

20. In order to entitle a plaintiff to a bare declaration of right under s. 15 Act VIII, he must make out to the satisfaction of the Court, some act done by the defendant, which is hostile to and invades that right, and which would justify an injunction or a decree for damages or a decree for delivery of possession being passed against the defendant, if the Court had so thought fit to exercise its discretion.—9 W. R. 325. *See* 9 W. R. 380; 11 W. R. 40, 77, 180, 257, 281, 331, 466, 543; 12 W. R. 26, 248 (*explained*

DECLARATORY DECREE (*continued*).

by 23 W. R. 437), 467; 14 W. R. 420; 15 W. R. 28, 421; (P. C.) 19 W. R. 133, 21 W. R. 101, 22 W. R. 2.

A fraudulent demarcation is a sufficient cause of action.—11 W. R. 543, 17 W. R. 466.

So also a fraudulent mutation of names in the Collector's register.—20 W. R. 365.

21. A declaration will not be made at the instance of a stranger.—9 W. R. 463. *See also* 20 W. R. 48.

22. Declaratory orders ought not, as a general rule, to be made in cases which are wholly one-sided and in which the decree would not be binding upon the parties really interested, if the defendant should succeed in re-establishing his right.—*Ib.*

23. A suit will not lie under s. 15 Act VIII to obtain a declaration that two pottahs and a chittah put forward by defendant in a *butwarra*, are forgeries.—9 W. R. 586.

24. A suit by a guardian of a minor having a farming lease which had 9 years to run, to obtain a — that certain pottahs put forth by the defendants to protect themselves from enhancement of rent were spurious and calculated to injure the future interests of the minor, was held to be premature and could not lie under s. 15 Act VIII.—10 W. R. 47.

25. Plaintiff was declared entitled to a declaration of his title under a pottah granted by a Soobah of Bhootan, acknowledged by defendants, and recognized by the British authorities.—10 W. R. 135.

26. A suit for declaration of a prescriptive right to the use and enjoyment of the water of a watercourse can be maintained without specification of and before damage sustained by plaintiff.—11 W. R. 254, 285.

27. When a *kutkina* lease relied on by an intervenor in a rent suit is found to be fictitious, plaintiff has a right to seek a declaration to that effect, and to a perpetual injunction to restrain the intervenor from setting it up.—11 W. R. 455.

28. Where plaintiff claims 17 beegahs through J and five others, and J only is found to have had any interest in the land, a — that he has purchased J's rights and interests whatever they might be, is bad. The Court should decide the precise rights which passed to plaintiff.—12 W. R. 327.

29. No suit will lie for a declaration of a right of occupancy, unless there has been some act to disturb that occupancy, and not the mere grant of a *talookee* pottah to a third party, nor the obtaining of a decree for arrears of rent against such third party.—12 W. R. 467.

30. Where a plaintiff was declared by a judgment to be entitled to a share of the property sued for, and the decree on that judgment awarded the whole of the property to the plaintiff, but there was nothing to enable the Appellate Court to limit the decree to the share to which his right was established, the decree was entirely set aside and the case was remanded by the Privy Council to ascertain that share.—(P. C.) 12 W. R., P. C., 1.

30*a*. Plaintiff, in a suit asking for a declaration of his title to certain land, and failing to prove that, but only showing 19 years possession, cannot have a decree declaring the particular title set up.—14 W. R. 109 (*foot note*). *See also* 20 W. R. 104.

31. The purchaser of property from a judgment-debtor whose right, title, and interest have been subsequently sold to another party who desires to take possession, has a right to sue for a declaration of title and confirmation of posession for the purpose of clearing his title from the suspicion of its being founded on a collusive sale.—15 W. R. 95.

32. A reversionary heir may sue, during the lifetime of the widow, for a — to the effect that an alienation will not bind him in the event of his surviving the widow.—15 W. R. 96.

Or for a declaration of the invalidity of a will set up to his prejudice.—16 W. R. 214.

33. When a Magistrate. proceeding under chap. XX Act XXV of 1861, removed a bridge,—*Held* that a suit would not lie for a naked declaration of right without any consequential relief against parties no further interested in the matter than that they had put the Magistrate in motion.—15 W. R. 293.

34. The removal of a serious cloud upon the title of a party is a sufficient warrant for a —, *e.g.* a suit to obtain a declaration that a mortgage-bond was falsely alleged to have been registered and was invalid as being a forgery, the registration having been obtained by false personation. —15 W. R. 421.

So also the registration of an *istemraree* pottah limiting a landlord's rent, the execution of which he denied.—15 W. R. 487. *See also* 20 W. R. 365, 24 W. R. 336.

35. There is nothing in s. 15 Act VIII to prevent the entertainment of a suit to ascertain how the shares of a deceased person are vested, notwithstanding that no overt act has occurred to give rise to relief in the shape of damages or a decree for possession.—17 W. R. 169.

36. Plaintiff's right to a — as to the erroneousness of a Magistrate's order under s. 320 Act XXV of 1861 is not affected by the fact that the order has not been put in force. —17 W. R. 281.

37. A decree which declared plaintiff entitled to a certain share of offerings by right of inheritence, was construed to refer to existing, not future, offerings.—18 W. R. 202.

38. Where plaintiffs asked for a declaration of right to remove to their own house and keep there, for the period of their turn of worship, an idol set up by the common ancestor of the litigants but whose temple had been destroyed by the erosion of the river,—*Held* that the Court, before making a —, should define the period for which plaintiffs are entitled to worship, and should also provide for the re-conveyance of the idol to the place where it was, at plaintiff's expense and before the expiration of their turn.—19 W. R. 28.

39. The High Court was held to have exercised a sound discretion in entertaining a suit for a — where a zemindar who, in a suit for enhancement, had had his zemindaree right denied, came into Court to have that right ascertained and declared.—(P. C.) 19 W. R. 171. *See also* 24 W. R. 13.

40. Where a — is sought under s. 15 Act VIII without consequential relief in the same suit, the Court must see that the declaration of right may be the foundation of relief somewhere.—(P. C.) *Ib.* *See also* 19 W. R. 268, 24 W. R. 215.

The declaration can only be claimed in those cases in which the Court could grant relief if relief is prayed for.—(P. C.) 23 W. R. 150.

A — cannot be made under s. 15 unless there be a right to consequential relief capable of being had in the same Court or in certain cases in some other Court.—(P. C.) 23 W. R. 314.

The intention of the above rule must not be taken to deny to the Courts of this country the power to grant decrees in any case in which, indenpendently of s. 15, these Courts have power to grant a decree.—25 W. R. 516.

The mere quieting of doubtful titles is not sufficient reason for a —.—(P. C.) 23 W. R. 314.

41. The holder of a decree which declares that the boundary-line laid down in the survey-map as the boundary line of the plaintiff's permanently settled estate is not the true boundary-line, is not entitled either to have the decree proclaimed on the spot or to have the line erased from the survey-map.—19 W. R. 232.

42. Where N L died leaving a widow and an adopted son, and on the death of the latter the widow adopted another son, and N L's brother sued to have the adoption declared invalid and to have his reversionary right declared. the Court refused (with reference to the uncertainty of the law in respect of the right of the presumptive next taker after a Hindoo widow to a decree declaring her adoption invalid) to make the declaration.—19 W. R. 419.

43. The refusal of a Deputy Collector to proceed with the sale of property which a decree of the Civil Court declares plaintiff entitled to bring to sale, does not give a fresh cause of action for the purpose of obtaining a —, though it may be a good ground for asking the exercise of the High Court's extraordinary powers.—20 W. R. 16, 17.

44. In a suit for a declaration of title to a share of an estate, although plaintiffs fail to satisfy the Court that their title to the land has been acquired in the way they state, yet, if it is admitted that they have been in possession for more than 12 years, the effect of such possession is to extinguish other titles if any existed, and plaintiffs ought to have the declaration sought.—20 W. R. 104, 23 W. R. 205.

45. Where plaintiff's cause of action is the denial by defendants of his proprietory title (*i.e.* of the relationship

DECLARATORY DECREE (*continued*).

of landlord and tenant) and both Courts have found that title to be unquestionable, plaintiff is entitled to a decree declaratory of his title instead of being referred to a fresh suit for a kubooleut.—20 W. R. 261.

46. A — may be given to plaintiffs if the Court finds that they are the reversionary heirs of the deceased, and that the act of his widow in relinquishing the land in dispute was not binding upon them.—21 W. R. 54.

47. The principle that any person having rights in property whether present or contingent, is entitled to come into a Court of Equity to complain of any attempt, made by persons having no authority to do so, to deal with the property in a mode which may ultimately harm him in the matter of his title, is only acted upon when the mere lapse of time is of itself likely to render the plaintiff less able than he is at present to meet the difficulty and to clear away the cloud which the attempt complained of may throw over his title.—21 W. R. 431.

48. When a plaintiff has failed in a suit for partition, he cannot as of right claim to have a — .—22 W. R. 11. 333.

49. When a plaintiff has failed to prove a specific fraud (*e.g.* in a suit for *khas* possession to prove that the *jummabundee* papers upon which the defendant had set up a *mokurruree* title were a forgery), he cannot be allowed to succeed on a collateral matter by claiming a declaration that defendant had not a right to occupy the land at a fixed rent.—22 W. R. 221.

50. Where, on the occasion of the *butwarra* of a zemindaree, the proprietors of an *ousut* talook interfered and caused the Collector to exclude certain land belonging to the plaintiff from the maps and records of the zemindaree made on the occasion of the *butwarra*, they were held to have made evidence likely to be used adversely to plaintiff's rights and justifying his bringing an action against them for a declaratory title.—23 W. R. 23.

51. A suit instituted by a zemindar against a number of his ryots for a declaration of a *mâl* title by setting aside, not a deed set up, but an allegation made by the defendant of a *bromuttur* title, was held to be not maintainable, because relief could not be granted in the shape of merely setting aside an assertion which may have been merely by word of mouth.—(P. C.) 23 W. R. 150. *See also* 25 W. R. 516.

52. Act X of 1859 gave no power to a Court to pass a - -. —23 W. R. 442.

53. A decree-holder may bring a suit to have it declared that a *mokurruree* alleged to have been granted by his judgment-debtor was invalid because created pending attachment of the property in dispute, without first causing the judgment-debtor's proprietory right to be sold in execution of the decree.—24 W. R. 36.

54. Where no overt act was mentioned in the plaint which would entitle plaintiffs to a — under s. 15 Act VIII, and such overt act appeared on the admitted facts of the case, the defect in the plaint was held to have been cured. —24 W. R. 242.

55. In dismissing a suit for *khas* possession brought by a tenant against his under-tenant, a Court is at liberty to make a declaration as to the nature of defendant's tenure. —24 W. R. 244.

See Acquiescence 3.
Appeal 128, 186.
Attached Property 30.
Auction Purchaser (Execution Sale) 21.
Breach of Contract 19.
Certificate 109, 111.
Cesses 2.
Churs 51.
Co-sharers 38*a*, 63.
Court Fees 20, 23.
Decree 23.
Dismissal of Suit or Appeal 4.
Dower 32.
Ejectment 59, 78.
Enhancement 10, 60, 79, 189, 192, 194, 241, 287, 292.
Evidence (Estoppel) 41, 62, 75, 112.
See Evidence (Presumptions) 5.
Ex-parte Judgment or Decree 15.
Ghatwals 19, 27.
High Court 81.
Hindoo Law (Adoption) 47, 51, 68, 73.
" " (Alienation) 12.
" Widow 108, 115, 121.
Husband and Wife 16.
Illegitimate Child 2, 3.
Intervenor 42.
Judgment 14.
Jurisdiction 120, 124, 178, 191, 194, 201, 203, 204, 209, 212, 246, 342, 459, 488, 491, 517.
Kubooleut 48.
Lakheraj 15.
Lease 54.
Limitation 98, 103, 109, 137, 143, 181, 228, 235, 239, 257.
" (Act X of 1859) 18, 30.
" (" XIV ") 194, 271, 303, 320, 326.
Marriage 24, 27.
Misjoinder 2.
Notice 13.
Onus Probandi 15, 111, 131, 169, 181, 185, 206, 213, 222.
Partition (Butwarra) 37.
Practice (Execution of Decree) 180, 235, 236, 272, 274.
" (Parties) 36.
" (Possession) 21, 34, 42, 51, 52, 58.
Privy Council 53, 76.
Registration 52, 70, 120.
Res Judicata 30, 44, 66, 72, 73, 83, 84, 85, 90.
Reversioner 7, 24.
Right of Way 25, 27.
Settlement 20.
Sale Law (Act XI of 1859) 34.
Special Appeal 38, 73.
Stamp Duty 32, 67.
Timber 3.
Title 3, 18.
Trees 2.
Value of Suit or Appeal 16.
Will 51.
Wrongs and Remedies 8.

Decree.

1. The splitting of the amount of a — into shares for the private convenience of the decree-holders, unless the judgment-debtor was a party to the arrangement, cannot enable him to plead limitation against any of the decree-holders who may have slept over their rights. As far as the debtor is concerned, the - - continues a joint debt, for the whole amount of which he is liable to all the decree-holders.—1 W. R., Mis., 1. *See* 13 W. R. 128.

2. Purchaser of a Decree.—*See* Vendor and Purchaser 21.

3. The word "———" in s. 333 Act VIII must be read to include the judgment.—2 W. R., Mis., 240.

4. Decree for part of claim.—*See* Costs 103; Dismissal of Suit or Appeal 2.

5. A —, so long as it is unreversed, may be executed. Thus, several cases were tried together, and it was agreed that the evidence in one case should govern all, and judgment was accordingly given on all. Some were of an appealable value, and being appealed, the Appellate Court reversed the —. *Held* that the decrees in the unappealed cases (although contrary to the — in appeal) were good decrees on which execution might be issued.—9 W. R. 276.

6. Conditional Decree.—*See* Mesne Profits 72; Principal and Surety 20.

DECREE (*continued*).

7. The Judge should declare what the — is to be, and it is the duty of the pleaders to see that it is drawn up properly.—10 W. R. 96, 497; 20 W. R. 111.

8. In decreeing a suit for the delivery of *nekasee* papers under s. 24 Act X, it is not enough to give an order that the claim be allowed, but there should be a specific order for the delivery of the papers.—10 W. R. 279.

9. Where a plaintiff sues by his recognized agent and obtains a —, the — should stand in the name of the agent, not as for himself alone, but as agent and on behalf of the plaintiff.—11 W. R. 503.

10. A — without judgment, *i.e.* without the reasons for the — is bad.—12 W. R. 254.

11. Amendment of Decree.—*See* Costs 49, 61; Dismissal of Suit or Appeal 17; Practice (Amendment) 2, 6, 11, 17, 24; Practice (Execution of Decree) 8, 140; Practice (Review) 74, 82; 20 *post.*

12. Copy of Decree.—*See* Court Fees 2; 24 *post.*

13. A person to whom the ordering part of a — gives nothing, cannot be treated as having acquired any part in the —, merely because he has by mistake been described in the heading as the purchaser of the decree-holder's rights and interests.—15 W. R. 126.

14. Decree for accounts.—*See* Account 7.

15. A copy of the judgment with the schedule of costs appended does not constitute a — as required by s. 189 Act VIII.—15 W. R. 326.

16. A — was affirmed in appeal, and the case having come up in special appeal, was remanded on two points not affecting the judgment of the first Court. The defendant (appellant) having defaulted, the Lower Appellate Court dismissed the appeal, -*Held* that the decree of the first Court was untouched and final.—17 W. R. 402.

17. The Court refused to allow a — to stand which gave to the plaintiff something (*i.e.* lands whose boundaries were) unascertained. and which might not be ascertainable.—18 W. R. 34. *See also* 19 W. R. 81. 20 W. R. 364, 23 W. R. 285, 25 W. R. 39.

So also as to an imperfect —.—19 W. R. 267, 23 W. R. 228.

18. Where a — was sought to be altogether set aside, and there were no materials for separating the legal from the illegal part of the —, the Court declined to set aside a part of it.—18 W. R. 269.

19. A decree which left something undetermined until further enquiry, but showed clearly what was the intention of the Court making it. was allowed to stand.—18 W. R. 512.

20. Where the — of a Bench of the High Court for possession of land within specified boundaries was amended with reference to a map which another Bench had pronounced to be not good, and it appeared that the decision of the latter Bench was before the former Bench at the time of the amendment, that the order of amendment was clear and definite in its terms, and that the land in question was delineated on the map, the — was allowed to stand.—19 W. R. 109.

21. The omission from the schedule of a plaint of the boundaries or other specifications of land, does not exclude from the operation of the — matters strictly claimed in the plaint and referred to as such in the —.—20 W. R. 142.

22. Final decree.—*See* Ameen 26; Limitation (Act XIV of 1859) 283.

23. Decrees between the parties may be forcible evidence of title, but can scarcely be evidence of possession unless they be couched in a form which is declaratory of possession.—20 W. R. 271.

24. When stamps are put in by a party to the suit as required by s. 198 Act VIII, a copy of the — and judgment must be furnished to him without further costs. A District Judge is not justified in delaying the giving of the copy until blank papers are put in by the applicant.—20 W. R. 105.

25. Although no Court but a Court of Appeal can interfere with the — of a Court of competent jurisdiction yet, if the — has been obtained by fraud, it shall avail nothing for or against the parties affected by it, even in another Court.—22 W. R. 213.

26. A — is admissible as evidence even if it has become inoperative from not having been executed within the period of limitation.—(F. B.) 23 W. R. 128. *See also* 24 W. R. 251.

27. Decree with future effect.—*See* Practice (Possession) 90.

28. Consent-decree.—*See* Limitation (Act IX of 1871) 22.

29. A — should set out distinctly the boundaries and details of the property which is intended to be covered by it.—24 W. R. 479.

30. A defendant's possession cannot be considered as having ceased in consequence of a — unless he were actually dispossessed in execution of the decree.—25 W. R. 249.

See Adhikaree 2.
Adjustment.
Admission 1, 2, 4.
Appeal 19, 26, 34, 35, 57, 83, 84, 169, 170.
Arbitration 95.
Assignment 13.
Auction-Purchaser (Execution Sale) 14.
Boundary 14.
Co-defendants 1.
Collusive Decree.
Compromise 13, 16, 28.
Construction, 8, 18, 21, 113, 115.
Contribution 18.
Costs 82, 88, 89, 90, 92, 96.
Cross-Decrees.
Damages 17, 95.
Declaratory Decree.
Discharge.
Ejectment 13, 108.
Endowment 28.
Enhancement 254.
Evidence 25, 43, 85, 91.
,, (Documentary) 66, 83.
,, (Estoppel) 3, 49, 131.
,, (Oral) 14.
Ex-parte Judgment or Decree.
Fraud 7.
Fresh Suit 2.
Heir 5.
High Court 68.
Hindoo Law (Coparcenary) 62, 97.
Instalments 6, 8.
Interest 9, 44, 49, 53, 60, 74, 86, 95.
Intervenor 4, 10, 22.
Joint Decree.
Judgment 19.
Jurisdiction 11, 19, 47, 92, 218, 358, 390, 455, 500.
Kubooleut 20, 62.
Lis Pendens 6, 7.
Lost Document 1.
Mesne Profits 100.
Minor 30, 31.
Money Decree.
Notice 1.
Partnership 17.
Practice (Amendment) 2, 6, 8, 11, 21.
,, (Appeal) 13, 94, 105.
,, (Attachment) 1, 5, 5*a*, 40.
,, (Commissions) 3.
,, (Execution of Decree).
,, (Review) 67.
,, (Suit) 87.
Privy Council 81, 84, 85, 88, 89.
Remand 14.
Rent 6, 42, 43, 47, 78, 104.
Reversioner 19.
Revival of Decree.

DECREE (*continued*).

See **Sale 2, 23.**
Satisfaction.
Security 9.
Special Appeal 6, 24, 53, 126, 149.
Suit for Money 4.
Summary Award for Rent.
Supreme Court 1.
Trust 7.
Vendor and Purchaser 14, 21.
Zur-i-peshgee Lease 12.

Deed.

1. A Court of Equity will set aside the voluntary — of a weak man not absolutely *non compos mentis*, if it be satisfied that he had not at the time a mind adequate to the business and that he might be imposed on, or if it be not satisfied as to the entire good faith of all the parties to the transaction.—W. R. Sp. 65.

2. In a suit based on a deed, where defendant only put in issue the *factum* of the —, he is not entitled to fall back upon an alternative plea and raise the question of compliance.—7 W. R. 306.

3. A finding that a mortgage — has been attested by the Registrar of Deeds and proved by witnesses, is a sufficiently distinct finding on the *bona fides* of the —.—9 W. R. 167.

4. An alteration (whether material or not) made in a — without the consent of the parties who executed it, and with the fraudulent view of benefiting him who propounds it, vitiates the — wholly.—10 W. R. 250.

5. In cases of contract in India, it has never been held that a contract made under seal of itself imported that there was a sufficient consideration for the agreement.—(P. C.) 12 W. R., P. C., 6. *See also* 15 W. R., P. C., 14.

6. Estoppel by —.—*See* Evidence (Estoppel) 121.

7. In a suit to set aside a —, some evidence ought to be given by the plaintiff in order to impeach the — he seeks to set aside.—(P. C.) 21 W. R. 310.

See Auction-Purchaser (Execution Sale) 31.
Declaratory Decree 13, 14.
Endowment 1.
Escrow.
Evidence 45.
,, (Documentary) 26, 68.
,, (Oral) 5, 6, 8, 9, 13, 18, 22, 23, 48.
Gift.
Hindoo Widow 51.
Kuboolcut 54.
Mortgage 233.
Onus Probandi 160, 199.
Payment 6, 9.
Practice (Appeal) 26.
Registration.
Will 8.
Witness 7.

Deed of Sale.

1. A — obtained by duress conveys no title.—Sev. 697.

2. A — is complete on the date when it is signed and attested by the Cazee, and consideration is paid for it. Delay in delivery does not invalidate it.—W. R. Sp. 62. *But see* 10 *post*.

3. Where a — after execution is deposited with a third party until the purchaser performs certain acts as the consideration for the sale, and the purchaser by a trick gets possession of the — before such performance, no effect can be given to the — as against the vendor.—W. R. Sp. 222.

4. Effect of a — in execution of a decree when genuine and duly attested, though not strictly of a complete and final character.—(P. C.) 5 W. R., P. C., 111 (P. C. R. 38).

5. The non-delivery of a registered — to the purchaser until after the execution of a fresh bond in favor of a third party, will not render the — inoperative, or subject the purchaser to fresh liens not within his knowledge.—5 W. R. 109.

6. Where it has been found that a — has been duly executed, and that a certain sum of money has passed as consideration, and there is a recital in the deed that the balance of the consideration money was paid previously to the execution of the —, there is something more than a presumption that the whole consideration has passed.—8 W. R. 215.

7. The execution of a — cannot be treated as an actual or constructive transfer of possession, upon a contract under which the vendor sells that of which he has not possession and to which he may never establish a title. The — in such a case can only be evidence of a contract to be performed *in futuro* and upon the happening of a contingency, of which the purchaser may claim a specific performance if he comes into Court showing that he has himself done all that he was bound to do.—(P. C.) 12 W. R., P. C., 6. *See also* (P. C.) 18 W. R. 140, 20 W. R. 446, 21 W. R. 101, 23 W. R. 163, 165.

8. The custodian of a — is liable if he cannot give satisfactory explanation of his neglect to keep the — entrusted to him.—13 W. R. 328.

9. Where plaintiff alleges that he agreed to sign and did execute a — for a consideration of a sum of money in consequence of pressure put upon him and in order to get back certain papers, etc., of his which had been abstracted by the defendant and his servants, he cannot, whether under the English or Mahommedan law, or under the general rule of equity and good conscience, be entitled to treat the — as a mere nullity, and be allowed to avoid the contract and to retain the money.—(P. C.) 15 W. R., P. C., 50.

10. It is not enough to prove the writing and signature of a —; there must be proof that it was delivered as a complete instrument.—22 W. R. 367. *But see* 2 *ante*, 23 W. R. 131.

11. The — which plaintiffs sought to set aside as fabricated and fraudulent was held to have been executed by the principal plaintiff's grandmother with her knowledge and by her authority, with the intention of vesting the property therein referred to in the defendants.—(P. C.) 26 W. R. 86.

See Assignment 15.
Benamee 34, 36.
Construction 117.
Conveyance 7.
Evidence 7, 62, 92.
,, (Documentary) 52, 122, 127.
,, (Oral) 10, 12, 18, 19, 23.
Fraud 11.
Husband and Wife 36.
Jurisdiction 118.
Mookhtar 22.
Mortgage 103, 288.
Onus Probandi 68, 272.
Purchase Money 3.
Registration 13, 16, 18, 21, 33, 48, 49, 58, 59, 60, 61, 120, 138, 140, 141.
Specific Performance 10.
Vendor and Purchaser 50, 68.
Value of Suit or Appeal 1.

Defamation.

1. A civil action for damages lies for — of character.—W. R. Sp. 269 (L. R. 52). *See also* 7 W. R. 117.

2. The gist of the offence of — is whether the charge was made in good faith or not.—1 W. R., Cr., 6.

3. Amends is not awardable in such cases.—*Ib.*

4. A false accusation not made in good faith renders the party making it liable to be charged with —.—2 W. R., Cr., 35.

5. Being of low caste will not debar a man from prosecuting for — on his being falsely charged with theft.—*Ib.*

DEFAMATION (*continued*).

6. S. 499 Penal Code makes no distinction between written and spoken —.—2 W. R., Cr., 36 (4 R. J. P. J. 172).

7. Under the same section, a person using defamatory expressions for the protection of his own interests, is not privileged, unless the imputation is made in good faith, *i.e.* with due care and attention.—3 W. R., Cr., 45.

8. Act XVIII of 1862 refers only to the High Court in its original criminal jurisdiction, and is not applicable to Mofussil Courts. S. 27 of that Act requires proof of the circumstances relied on as a defence before good faith can be presumed in a case of —. The *onus* of proving good faith is on the person making the imputation. Before such person can claim the benefit of Exception 9 s. 499 Penal Code, he must show that he has exercised due care and caution. —4 W. R., Cr., 22. *See* 14 W. R., Cr., 22.

9. Failure in proving a *bonâ-fide* criminal charge does not make the complainant liable to an action for damages for —.—5 W. R. 282, 6 W. R. 245.

10. In a case of —, proof of despatch by post to a certain district of the paper containing the defamatory matter is tantamount to proof of publication thereof in that district. —5 W. R., Cr., 44.

11. Greater damages are not necessary for defamation of the character of a Principal Sudder Ameen's vakeel than of a Sudder Ameen's vakeel.—6 W. R. 25.

12. A person against whom information has been falsely given with a view to his injury has a right to bring a civil action for damages with or without the consent of the public servant to whom the information was given.— 9 W. R., Cr., 31.

13. A suit for damages for — of character is cognizable by a Civil Court, even though the words on which the suit is founded were spoken in a judicial proceeding.— 11 W. R. 534.

14. In such a case a Police Officer's report may be evidence that the words were spoken, but not of malicious intention.—*Ib.*

15. The plaintiff must start his case by showing that he was not guilty of the offence charged, and it will then be upon the defendant to show that he made the imputation in good faith and for the public good. – *Ib.*

16. A report made by an officer in execution of his duty, and as the result of an order from his superior, was held to fall within the 9th Exception to s. 499 Penal Code.— 14 W. R., Cr., 22.

17. What was held to amount to making or publishing an imputation within the meaning of the same section.— 14 W. R., Cr., 27.

18. A suit for damages for — of character cannot be maintained against witnesses for evidence given in a judicial proceeding, but may when it is substantially a suit for malicious prosecution.—(P. C.) 17 W. R. 283. *See* 20 W. R. 177.

See Damages 102.
Jurisdiction 296.
Libel.
Limitation (Act XIV of 1859) 190.
Malicious Prosecution 1, 3.
Representation 2.
Slander.
Special Appeal 93, 161.

Default.

1. A suit pending when Act VIII of 1859 came into operation was dismissed for plaintiff's — of appearance at the hearing. *Held* that the plaintiff's right, under the old law, of bringing a fresh suit, was not barred by s. 114 —. 1 Hay 278.

2. When a plaintiff cited as a witness refuses to attend, the law does not require the Court to dismiss the suit for —, but vests the Court with the discretion of passing any other order it sees proper upon the evidence on the record.— 2 Hay 521. *But see* 2 Hay 584.

3. Plaintiff was ordered to attend to give evidence, but failed to do so. The Court, however, being satisfied with the evidence in support of his case, gave a decree in his favor. *Held* that the decree was valid.—Marshall 467. *See also* 18 W. R. 16.

4. The proper course under s. 346 Act VIII of 1859 on — of appearance by appellant is to dismiss the appeal. Where the Judge entered into the merits, the appellant was held entitled, upon the re-admission of the appeal, to a more careful consideration of the evidence adduced.—Sev. 760.

5. Where defendant denies a personal knowledge of the matters in dispute imputed to him by plaintiff, and fails to appear when summoned as a witness, the Court, before decreeing the suit as upon —, should be satisfied on evidence of the existence of such knowledge on the part of the defendant.—W. R. Sp. 24.

6. A Lower Appellate Court cannot, after considerable delay, dismiss an appeal for — without fixing any time for its disposal. In such a case the High Court can set aside the Lower Court's order in appeal, s. 347 Act VIII of 1859 applying only to cases of involuntary non-appearance.—W. R. Sp. 176.

7. S. 170 Act VIII authorises dismissal for — only against absent plaintiff, not against plaintiffs who appear. —1 W. R. 25, 168.

8. — by putneedar in a former suit cannot prejudice rights of zemindar now in possession.—1 W. R. 173.

9. Both parties having filed their evidence, the defendant did not appear at hearing, and the Court decided the suit *ex-parte* under ss. 110 and 111 Act VIII. The Lower Appellate Court held that these sections did not apply, and tried the case on its merits. The High Court held that the case fell under s. 147, and that the proper course for the Appellate Court to pursue was to remand the case. —2. W. R. 1.

10. Even in an *ex-parte* case it is necessary for the plaintiff to prove that he is entitled to the relief which he prays for.—2 W. R. 123.

11. The provisions of s. 170 Act VIII should only be applied to contumacious litigants, and wilful — should be shown.—6 W. R. 247, 11 W. R. 110, 18 W. R. 17.

12. The abandonment of proceedings under s. 269 Act VIII is not a — under s. 114 so as to bar a fresh suit. —10 W. R. 61.

13. Where a person interested in a suit was refused the right which he possessed to be made a party to it, he was held not precluded, under s. 114 Act VIII, from bringing a fresh suit because of the — of a party who had lost all interest in the former suit.—14 W. R. 401.

14. Where an appellant is refused postponement and his appeal is dismissed in his absence, the case is one of —, even though the Judge looked into the facts with such light as he could obtain from other sources. The appellant in such a case may apply for a re-hearing or for a review of judgment, but is not entitled to a special appeal.— 15 W. R. 143. *But see* 20 W. R. 425.

15. A suit "*number kharij* or struck off" is not a — under s. 114 Act VIII so as to bar a fresh suit.—17 W. R. 219.

16. In a case struck off for —, if the order has been properly made under s. 114 Act VIII, the remedy is by motion under s. 119; if improperly made, it is open to appeal.— 21 W. R. 124.

17. S. 170 Act VIII does not give the Court an arbitrary power to decide against a party for — without reference to the state of the evidence, still less without hearing the evidence out.—24 W. R. 314.

See Abatement 29.
Appeal 9, 17, 29, 31, 36, 41, 52, 53, 97, 98, 102, 164.
Charge 1.
Compromise 13.
Contempt of Lawful Authority of Public Servant 1, 5.
Contribution.
Co-sharers 28.
Costs 5, 9.
Damages 63.
Decree 16.
Discharge 5.
Dismissal of Complaint 1, 5, 9.
" of Suit or Appeal 3, 5, 6, 8, 14, 21.

DEFAULT (*continued*).

See Dur-ijara 2.
Ejectment 2, 9, 11, 13, 14, 34, 49, 51, 57, 66, 68.
Enhancement 95.
Ex-parte Judgment or Decree 3, 5, 13, 15.
Fine 5, 6, 9, 16.
High Court 164.
Howala 2.
Instalments 3, 4, 5, 19.
Interest 1, 8, 39, 64, 88, 95, 99, 100, 101, 106.
Intervenor 63,
Jurisdiction 254, 318.
Lease 2, 5, 7, 14, 38, 39, 70.
Limitation 130, 145.
,, (Act XIII of 1848) 4, 6, 7, 15.
,, (Act XIV of 1859) 90, 123, 137, 142.
,, (Act IX of 1871) 22.
Maintenance 42.
Mesne Profits 5.
Mortgage 284, 286.
Objection (under s. 348 Act VIII of 1859) 20.
Onus Probandi 139.
Partition (Butwarra) 25.
Pleader 40.
Practice (Appeal) 3, 61.
,, (Commissions) 1.
,, (Execution of Decree) 68, 119, 159.
,, (Parties) 3, 5, 7, 17, 27, 28, 34, 38.
,, (Review) 31, 92.
Principal and Agent 8.
Privy Council 12, 38, 43.
Putnee Talook 1, 2, 6, 13, 16, 20, 50, 130.
Registration 37.
Re-hearing 1, 6.
Rent 22, 31.
Re-sale 1, 2, 3, 4, 5.
Res Judicata 12, 41, 49, 50.
Resumption 20.
Revival of Suit or Appeal 5.
Right of Appeal 1.
Sale 51, 88, 95, 97, 151, 204, 205, 214.
,, Law.
,, ,, (Act XI of 1859).
Special Appeal 4, 26, 43, 74, 113.
Stamp Duty 52.
Sub-lease 2.
Tullubana 2.
Vendor and Purchaser 68.
Waste 4.
Witness 25.
Zur-i-peshgee Lease 34.

Defect of Parties.

See Dismissal of Suit or Appeal 28.
Error 5.
Irregularity 7.
Plaint 10.
Practice (Attachment) 71.
,, (Parties) 4, 23.
Res Judicata 74.
Settlement 20.
Special Appeal 127.

Defence.

A sentence of imprisonment passed on a woman who was never put on her —, was quashed as illegal.—6 W. R., Cr., 17.

See Abatement 2.
Accused.
Contract 9.
Costs 21.
Ex-parte Judgment or Decree 2.
Fine 2.
Jurisdiction 4, 288.
Municipal 9.
Onus Probandi 26.
Payment 2.
Practice (Amendment) 80.
,, (Criminal Trials) 30, 44, 61.
,, (Suit) 14, 25, 58.
Remand 52.
Rent 89.
Witness 66.

Defendants.

See Abatement 9.
Appeal 11, 34, 35, 126.
Arrest 1.
Bond 2.
Co-defendants.
Contract 9, 10.
Costs.
Default 9.
Ex-parte Judgment or Decree.
High Court 154.
Joinder of Parties 5, 6.
Judgment 20.
Kubooleut 25.
Laches 1.
Limitation 140.
Onus Probandi 125.
Payment 1.
Pleader 12, 13.
Practice (Appeal) 6, 23, 36, 44, 45.
,, (Parties) 16, 17, 21, 27, 34, 41.
,, (Suit) 1, 9, 25, 51.
Pro-formâ Defendants.
Remand 27.
Rent 49.
Statute of Frauds 1.
Summons 1.
Written Statement 4.

Del Credere Agent

See Limitation (Act XIV of 1859) 146.
Principal and Agent 58.

Delhi.

See King of Delhi.
Pension 1.

Delivery.

1. Short delivery.—*See* Bill of Lading 5, 6; Carrier 5; Freight 2.
2. Wrongful delivery.—*See* Railway 3.
3. Non-delivery.—*See* Carrier 1, 2, 4; Damages 15, 107; Jurisdiction 437.

See Arbitration 85.
Bill of Lading 7.
Bond 16*a*.
Breach of Contract 18.
Contract 31.
Damages 95, 107.

DELIVERY (*continued*).

See Decree 8.
Deed of Sale 2, 5, 10.
Demurrage 1.
Escrow 1.
Gift 2, 11, 15, 35, 40, 45.
Hindoo Law (Adoption) 51.
,, Widows 97.
Hoondee 10, 14.
Indigo 21.
Jurisdiction 453.
Limitation 178.
Payment 11.
Practice (Execution of Decree) 168.
Registration 103, 148.
Right to Sue 18.
Sale 124.

Demurrage.

How the terms of a stipulation for — were construed in a case where a purchaser engaged to take delivery of cargo from a ship at a certain rate *per diem* and in the event of failure, to pay —.—(O. J.) 23 W. R. 139.

See Splitting Cause of Action 18.

Demurrer.

See Practice (Suit) 8.

Dena Powna.

See Bond 8.
Indigo 1, 16.

Deposit.

1. Act VI of 1862 (B. C.) applies where a ryot deposits what he thinks is due, but not to suits for rent for the year preceding that for which the — is made.—7 W. R. 487.

2. S. 4 Act VI applies only to under-tenants and ryots of whose possession there can be no doubt.—8 W. R. 138.

3. A party is not entitled to benefit from a — under Act VI of 1862 (B. C.) if it was paid in without a tender to and refusal by the opposite party.—15 W. R. 4.

4. In a suit for rent, where an intervenor on his own account who pleads a — in Court made under Act VIII of 1869 (B. C.) is made a defendant by the Court, that fact does not give rise to any equity as between the plaintiff and the other defendants; whereas, had the plaintiff sued him jointly with the other defendants, the payment made by him on account of rent might have been reckoned to the benefit of the other defendants as well as himself.—21 W. R. 277.

5. A suit for rent due for a period prior to a — made under Act VIII of 1869 (B. C.) is not barred by s. 31 of that Act where the contention of the defendants is that the tenure was the depositor's and that the rent was due from him and not from them.—21 W. R. 278.

6. Tenants who have been in the habit of depositing in Court the rent due to a landlord in his sole name, are not justified, without receiving notice or order to that effect, in making the — in the joint names of that landlord and another.—24 W. R. 128.

See Auction-Purchaser (Execution Sale) 13.
Bank of Bengal 2.
Bill of Sale 2.
Contractor 4.
Costs 80.
Equitable Mortgage 1.
Evidence (Oral) 17.
Ex-parte Judgment or Decree 1.
High Court 142.
Interest 15, 71, 84.
Joinder of Causes of Action 4, 18.
Jurisdiction 187, 312, 345, 359.
Lien 4, 6.
Limitation (Act X of 1859) 31.
,, (Act XIV of 1859) 68, 90, 181, 234, 246, 328.
,, (Act IX of 1871) 40.
Notice 26.
Payment into Court.
Practice (Attachment) 34.
,, (Execution of Decree) 185, 229.
Principal and Surety 5.
Privy Council 72, 82.
Putnee Talook 30, 56, 89, 113, 116.
Registration 89.
Rent 12.
Re-sale, 1, 2, 3, 6.
Revival of Suit and Appeal 5.
Rules of Practice 32.
Sale 95, 139.
,, Law 17.
,, ,, (Act I of 1845) 1.
,, ,, (Act XI of 1859) 18.
Securities (Government) 2.
Set-off 6, 19.
Small Cause Court 30,
Special Appeal 46.
Tender 1, 2.
Tullubana 1.
Voluntary Payment 8, 9.

Deposition.

A Moonsiff has no power to take a voluntary —.—7 W. R. 47.

See Ameen 11, 21, 24.
Evidence 6, 46, 54, 75.
,, (Admissions and Statements) 40, 48.
,, (Documentary) 39, 96, 108, 115.
,, (Estoppel) 120.
,, (Oral) 16, 20, 46, 49, 50, 55.
False Evidence 20, 22, 23, 32.
Practice (Commission) 32.
Summary Trial 6.
Witness 13, 57, 63, 68, 99, 81, 82, 83, 85.

Deputy-Magistrate.

1. A — should adjudicate on charges of criminal trespass, unlawful assembly, and mischief, instead of referring the case under s. 318 Act XXV of 1861 to the Magistrate.—2 W. R., Cr., 2.

2. A — vested with the powers of a subordinate Magistrate of the 2nd class cannot institute proceedings under the above section.—*Ib.* *See* Jurisdiction 388.

3. A — should not act as Magistrate in which he is himself the prosecutor and take the confessions of prisoners before himself.—3 W. R., Cr., 29.

See Illegal Gratification 4.
Jurisdiction 186.
Practice (Attachment) 16*a*.
,, (Criminal Trials) 27.

Designs.

See Copyright 2.

Detention.

1. S. 152 Act XXV of 1861 applies only where there has been a continuous — of 24 hours.—1 W. R., Cr., 5.

DETENTION (*continued*).

2. In no case is a Police Officer justified by s. 152 in detaining a person for a single hour, except upon some reasonable ground justified by all the circumstances of the case.—9 W. R., Cr., 88.

3. A commitment to *hajut* before evidence is recorded, is illegal.—13 W. R., Cr., 27.

4. Proof of — with a guilty knowledge is not necessary under s. 124 Act X of 1872.—19 W. R., Cr., 36.

5. The — in custody by a Magistrate of an accused is not justifiable, except upon a proper remand made after taking sufficient evidence given on oath or solemn affirmation.—25 W. R., Cr., 8.

See Demurrage.
Onus Probandi 140.
Tort 2.
Torture 2.

Devastavit.

A widow is not liable in a suit against her individually to be made answerable out of her husband's assets for any devastation which he may have committed.—10 W. R. 444.

See Executor 1.

Diluvion.

See Abatement 2, 3.
Churs.
Occupancy 10, 12.

Disability.

See Hindoo Law (Adoption) 68.
Incapacity.
Limitation 74, 75, 129, 234.
, (Act XIII of 1848) 14.
, (Act XIV. of 1859) 23, 34, 56, 63, 93, 97, 98, 108, 109, 130, 148.
,, (Act IX of 1871) 19.
Privy Council 55.
Vendor and Purchaser 42.

Discharge.

1. A — by a Magistrate under s. 250 Act XXV of 1861 is not final like an acquittal under s. 255, but the Sessions Judge may under s. 435 order commitment of the accused. 5 W. R., Cr., 58. *See also* 6 W. R., Cr., 13; 9 W. R., Cr., 15; 12 W. R., Cr., 65; 18 W. R., Cr., 39.

So also under s. 435 Act VIII of 1869.—15 W. R., Cr., 61.

2. A Magistrate should not decide a case or — an accused person without taking the evidence of the prosecutor's witnesses.—7 W. R., Cr., 45, 47. *See* 15 W. R., Cr. 87.

3. Where there is no *primâ facie* case against an accused and he has not been put on his defence, nor any charge preferred against him, he should be discharged and not acquitted.—8 W. R., Cr., 45.

Under s. 215 Act X of 1872 an order of — cannot be passed unless the evidence of all the witnesses for the prosecution has been taken; and under s. 220 no acquittal can be recorded unless a charge has been drawn up.—22 W. R., Cr., 25.

As to the former.—24 W. R., Cr., 9, 62.

It is not incumbent on the Magistrate to examine every person named as a witness by the complainant. S. 215 (Explanation 3) must be read with s. 362 which vests a discretionary power in the Magistrate.—23 W. R., Cr., 9. *But see* 24 W. R. 62.

4. The — of a person accused of an offence triable by a Court of Session is no bar to his being again apprehended and brought before a Magistrate with a view to commitment independently of an order from the Court of Session under s. 435 Act XXV of 1861.—8 W. R., Cr., 61.

Whether fresh proceedings be taken at the instance of a private prosecutor or under s. 68 at the instance of the Magistrate himself.—14 W. R., Cr., 66.

5. The High Court declined to interfere where a Deputy Magistrate directed the — of an accused under s. 342 Penal Code because the complainant and his witnesses were not present.—13 W. R., Cr., 35.

6. An accused who is present to meet any charge that may be brought against him, is entitled to his — if no evidence be forthcoming against him owing to the absence of the prosecutor and his witnesses, unless the Magistrate is satisfied that the case is one in which an adjournment under s. 224 Act XXV of 1861 is proper.—15 W. R., Cr., 53.

7. The High Court is competent, under s. 297 Act X of 1872, if it considers that the accused was improperly discharged, to order him not only to be tried, but also to be committed for trial; but from the absence of the words "order him to be tried" in s. 296, it would seem that a Magistrate cannot under that section direct a Subordinate Court to take further evidence in a similar case.—19 W. R., Cr., 56.

See Acquittal 2.
Admission 1.
Bill of Exchange 7.
Bond 22.
Contribution 5.
Debtor and Creditor 6.
False Evidence 45.
High Court 181.
Insolvency 2, 6, 16.
Jurisdiction 19.
Practice (Execution of Decree) 151, 187.
Revival of Complaint 2, 3.
Satisfaction.
Wrongful Confinement 3.

Disclaimer.

Where M executed on behalf of N a *ladawinamah* or deed of —, disclaiming all right to an estate to which he was one of the heirs-at-law, upon consideration of receiving a monthly allowance for maintenance, and accepted a *purwanneh* securing that allowance to himself and his heirs,—*Held* that the *ladawinamah* and *purwanneh* amounted to a valid contract by which the parties were respectively bound; and that the *ladawinamah*, being founded on good consideration, was binding on the heirs, who could not set it aside except by returning the money which had been paid in advance on account of the maintenance allowance.—(P. C.) 21 W. R. 28.

See Hindoo Widow 5, 6, 47, 94.
Istifa.
Right of Appeal 4.
Will 29.

Disinherison.

See Exclusion from Inheritance.
Will 44.

Dismissal of Complaint.

1. Where the default of complainant's witnesses was caused by the Deputy Magistrate shifting his Court to a place different from that named in the summons,—*Held* that it was irregular to throw out the case without giving them a second opportunity of appearing.—5 W. R., Cr., 51.

2. A — by a Magistrate without examination of complainant is illegal.—8 W. R., Cr., 12.

So also without examination of complainant's witnesses. - 25 W. R., Cr., 10.

3. If, upon a complaint duly made before a Magistrate, the act imputed appears to be an offence, and there is *primâ facie* evidence to suppose the accusation true, the Magistrate is bound to proceed, and cannot order — although he may consider a civil suit more applicable—8 W. R., Cr., 65.

4. A — by Magistrate not legal merely because the offence disclosed is different from that charged.—8 W. R., Cr., 82.

5. There is no provision in chap. XIV Act XXV of 1861

DISMISSAL OF COMPLAINT (*continued*).

for — on account of non-attendance of complainant.—10 W. R., Cr., 31. *See* 15 W. R., Cr., 53.

6. The High Court cannot under s. 434 Act XXV of 1861 interfere in a case of — by a Magistrate under s. 67.—10 W. R., Cr., 49.

7. The — under s. 67 Act XXV of 1861 is in the discretion of a Magistrate.—10 W. R., Cr., 50.

So also a — under s. 205 Act X of 1872.—24 W. R., Cr., 64.

8. A Magistrate cannot order — under s. 67 Act XXV of 1861 without hearing the evidence.—10 W. R., Cr., 61.

Unless where there is clearly no *primâ facie* case established.—16 W. R., Cr., 39.

9. A — not justifiable for default of prosecution, where, after the evidence of the prosecutor and his witnesses has been taken in the presence of the accused, the case is postponed for the evidence for the defence, and on the day to which the case is thus postponed the prosecutor is not present—12 W. R., Cr., 27. *See* 15 W. R., Cr., 53.

10. A — without sufficient and full enquiry is a — without enquiry.—14 W. R., Cr., 8.

11. The — by a Magistrate under ss. 180 and 244 Act XXV of 1861, as amended by Act VIII of 1869, was set aside in a case in which the accused were charged with an offence under s. 431 Penal Code by rendering a navigable channel impassable.—14 W. R., Cr., 63.

12. The — without examining all the witnesses named by the complainant, in a case under chap. XV Act XXV of 1861, was held opposed to s. 193.—16 W. R., Cr., 48.

13. The mere assertion of a claim to land by the accused does not justify the — as to theft of its produce. 16 W. R., Cr., 18, 75. *See also* 16 W. R., Cr., 78.

14. Want of explanation of the cause of complainant's *presence* on the spot where an alleged assault took place, want of explanation of *delay* in making complaint, and want of material evidence in the shape of *bruises*, were held not sufficient in law to justify a summary —.—16 W. R., Cr., 75.

15. Delay in making complaint is not of itself a legal ground for —, particularly where an explanation of the delay is tendered.—*Ib.*

16. An order of — upon a Police report without giving complainant an opportunity to show cause against the dismissal, was set aside.—17 W. R., Cr., 2.

See Adjournment 2.
Appeal 62.
Charge 1.
Fine 16.
Indigo 22.
Irregularity 8.
Jurisdiction 26.
Practice (Criminal Trials) 55.
Revival of Complaint.
Rioting 5, 6.

Dismissal of Suit or Appeal.

1. During the pendency of a suit for rent, plaintiff procured an attachment of the growing crops, and without authority, and before the suit was determined, carried off some of the crops,—*Held* that, although this was an act properly punished by the Court below as a contempt with a fine, it was no ground for dismissing the suit.—1 Hay 56 (Marshall 21).

1*a*. The inclusion by the plaintiff, in his notice of enhancement, of land belonging to the lakheraj holding of the defendant, is no reason for dismissing his whole suit.—W. R. Sp. (Act X) 110 (3 R. J. P. J. 95).

2. The entire claim of a plaintiff should not be dismissed only because a portion of it is proved to be false.—1 W. R. 155 (3 R. J. P. J. 222), 7 W. R. 92, 161.

Or because a just case is foolishly and wickedly attempted to be supported by false evidence.—(P. C.) 2 W. R., P. C., 13 (P. C. R. 548), 19 W. R. 107.

Or because plaintiff has misdescribed or over-stated the extent of his interest.—19 W. R. 190.

3. A Court is not bound to dismiss a case on account of non-appearance of plaintiff summoned by defendant to appear as a witness, when defendant did not petition for attachment or other legal process to be made by the Court to compel plaintiff's appearance.—2 W. R (Act X) 42.

4. On failure to prove service of notice (under s. 13 or 17 Act X) in a suit for enhancement, the suit should simply be dismissed without any declaratory decree.—3 W. R. (Act X) 139, 140; 5 W. R. (Act X) 14; 6 W. R. (Act X) 25.

So also when notice is bad in law.—13 W. R. 227.

5. A mere order of dismissal for default of prosecution, is not a decision within the meaning of the proviso to s. 77 Act X.—4 W. R. (Act X) 45.

6. In a case of default where defendant admits liability, the case should not be dismissed, but should be decided according to defendant's admission.—5 W. R. (Act X) 65.

7. A suit ought not to be dismissed because it was instituted before a Collector instead of a Sub-Division Court under s. 20 Act VI of 1862 (B. C.); but the plaint should be returned to the plaintiff with a view to its being filed in the proper Court.—5 W. R. (Act X) 87.

8. A party seeking to put in motion the stringent provisions of s. 346 Act VIII is bound to show very distinctly, that the procedure under it has been strictly complied with.—5 W. R., Mis., 22.

9. There is no provision in s. 6 Act XXIII of 1861 for the re-admission of an appeal once dismissed under that section.—6 W. R., Mis., 130.

10. A suit cannot be dismissed on the technical ground that a party has failed to verify his plaint as required by law.—10 W. R. 145.

Or that the plaint did not specify the land in defendant's possession.—14 W. R. 474.

Or on a mere point of form where all the parties are represented, and the plaintiff is entitled to a decree.—24 W. R. 79.

11. A suit which puts forward a joint claim should be dismissed unless that joint claim is established. It is not enough that one of the plaintiffs should make out his title.—10 W. R. 261.

12. Where a plaintiff's suit is barred by limitation, it should be dismissed with all costs.—11 W. R. 139.

13. In a suit to recover property brought by S and by D as guardian of R, where it was found that D alone was entitled to the property, the suit should not be dismissed on account of its formal incorrectness, but be allowed to proceed in the name of D alone, the name of S being struck off the record.—11 W. R. 507.

14. The dismissal of a suit for plaintiff's non-attendance is a penalty not to be inflicted unless upon proof of deliberate disobedience of Court's distinct order to attend.—17 W. R. 141.

15. An error as to date in the summons to plaintiff's witnesses is sufficient ground for setting aside an order dismissing his suit.—18 W. R. 454.

16. Where a party, suing for the whole of a property as well as for *khas* possession and mesne profits, fails to prove more than a proprietory right to a small portion, his entire claim ought to be dismissed—18 W. R. 507.

17. The fact of the first Court having made an improper decree is a ground for the Lower Appellate Court, not to dismiss the suit, but to make a proper decree.—19 W. R. 195.

18. The Lower Appellate Court has no authority to dismiss a suit after having found the only issue in the plaintiff's favor.—19 W. R. 318. *See* 20 W. R. 208.

19. Where plaintiff rests his case on a mortgage as well as a deed of sale and fails as to the latter, the suit should not be dismissed without trying the question whether there was a mortgage.—20 W. R. 73.

20. Where the first Court declared itself satisfied with the evidence of one witness and did not think it necessary to examine further witnesses whom the plaintiff adduced, the Lower Appellate Court, if not satisfied with the evidence of that one witness, ought, instead of dismissing the suit, to have given plaintiff an opportunity of examining the other witnesses.—20 W. R. 203.

21. No appeal lies from an order passed under s. 346 Act VIII dismissing an appeal for default, the remedy being an application under s. 347.—21 W. R. 65.

22. Where plaintiffs claim possession, but ask the Court to ascertain at what rate defendants ought to hold in case they should be found entitled to do so, their suit, whether they can obtain the alternative relief or not, should not be dismissed.—21 W. R. 125.

23. A suit should not be dismissed on the technical ground

DISMISSAL OF SUIT OR APPEAL (*continued*).

that persons having interest in the subject-matter had not been made parties, it being the duty of the Court to take action under s. 73 Act VIII.—21 W. R. 187.

24. If a plaintiff sues for enhancement of rent and altogether misrepresents the area and boundaries of the holding, the misrepresentation vitiates the plaint and renders the whole suit liable to dismissal.—22 W. R. 426.

25. A case having come on for hearing, the verification of the plaint was found to be false, whereupon plaintiff applied to withdraw the suit with permission to bring a fresh suit. As defendant had filed a written statement and had not objected to the verification,—*Held* that the Moonsiff, instead of rejecting plaintiff's application and dismissing the suit with costs, ought to have disposed of the case on its merits.—24 W. R. 71.

See Account 3.
Admission 1, 2, 4.
Appeal 31, 52, 53, 188.
Appellate Court 19.
Arbitration 91.
Auction-Purchaser (Execution Sale) 29.
Cause of Action 26.
Co-defendants 2.
Costs 46, 104.
Damages 67, 69*a*, 102.
Declaratory Decree 55.
Decree 16.
Default.
Evidence (Estoppel) 72.
Ex-parte Judgment or Decree 5, 20.
Forgery 2, 4.
Hindoo Widow 103.
Intervenor 7.
Joinder of Causes of Action 20.
Judgment 20, 29.
Jurisdiction 78, 137.
Limitation 130.
,, (Act XIII of 1848) 15.
,, (Act XIV of 1859) 137.
,, (Act LIII of 1860) 2.
Misjoinder 3, 9.
Mookhtar 5.
Objection (under s. 348 Act VIII of 1859) 20.
Plaint 5, 14, 16, 19, 21, 30, 32, 43.
Pleader 10, 19, 40.
Practice (Amendment) 27.
,, (Appeal) 61.
,, (Suit) 38, 47.
Principal and Agent 8, 17.
Privy Council 12, 38, 43.
Registration 36.
Rent 31, 62, 97, 98, 113.
Res Judicata 12, 13, 14, 16, 18, 23, 39, 41, 49, 50, 66, 74.
Right of Appeal 1.
Special Appeal 26, 46, 113.
Stamp Duty 11, 12, 22.
Suit on Document 1.
Summons 4.
Title 10.
Value of Suit or Appeal 2, 3, 4, 6, 10, 15, 17.

Dispossession.

See Auction-Purchaser (Execution Sale) 15.
,, ,, (Revenue Sale) 10.
Bond 21.
See Costs 21.
Ejectment.
Evidence (Oral) 33.
Ferry 5.
Intervenor 72.
Jurisdiction 52, 58, 77, 84, 96, 105, 118, 176, 239.
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Landlord and Tenant 5.
Limitation 48, 221.
,, (Act XIV of 1859) 16, 67, 149.
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Moveable Property 2.
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Practice (Possession) 1, 2, 4, 6, 18, 39, 47, 53, 57, 59, 66, 77, 79, 80, 81.
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Distraint.

1. A suit will lie, under cl. 7 s. 23 Act X of 1859, for an illegal distress upon an under-tenant who had paid his rent, in respect of rent due from his lessor to the superior landlord. -2 Hay 108 (Marshall 264).

2. A Gomashta is not competent to distrain for rent unless expressly authorised; nor is the zemindar liable for such illegal distress unless he ratify the act of the Gomashta.—2 Hay 289 (Marshall 282).

3. The exercise of the power of —— by one of a body of sharers in an undivided estate is illegal, with reference to s. 112 Act X of 1859.—Sev. 97.

4. S. 10 Act X of 1859 does not apply to a case where the plaintiff paid the amount claimed to the Court Ameen under protest, and afterwards brought his action alleging his rent to be much less than the rent distrained for.—Sev. 290.

5. A landlord cannot distrain crops for arrears due not from the tenant, but from a person who did not cultivate the crops, and is not in possession. —W. R. Sp. (Act X) 77 (2 R. J. P. J. 352).

6. No suit for damages for illegal —— of crops under s. 143 Act X can lie where the possession of the alleged distrainer and distrainee is clearly adverse, and where there is not either an actual or an implied relationship of landlord and tenant. – 1 W. R. 36 (3 R. J. P. J. 156). *See* 11 W. R. 539. *But see* 15 W. R. 451.

7. Nothing can affect suit for value of crops lost by wrongful —, to which plaintiff's title has been established. —1 W. R. 89.

8. Where a distrainer acts without the authority of the superior holder, s. 143 Act X will not apply, but the acts of the distrainer are those of a trespasser for which he may be sued for damages in the Civil Court.—5 W. R. (Act X) 67.

9. Nor will Act X apply in a case where the distrainer is the agent of a person between whom and the defaulting tenant the relation of landlord and tenant does not subsist. —*Ib.* *See* 11 W. R. 539.

10. Where a suit has been brought, under s. 142 Act X, on account of property damaged or destroyed by neglect of a distrainer, the Court is not competent to award damages for vexatious —. Such damages are properly awarded by the Collector under s. 138 in a suit to contest the distrainer's demand.—5 W. R. (Act X) 68.

11. S. 142 Act X contemplates the case of persons having authority to distrain, but who distrain otherwise than according to the provisions of the Act. S. 143 contemplates not only the case of persons who, though not empowered to distrain, profess to follow the provisions of the Act, but also comprises the cases of persons who distrain under color of the

DISTRAINT (*continued*).

Act but do not do so according to the provisions of the Act. —12 W. R. 68.

12. In order to maintain a suit under s. 143 Act X, the plaintiff must prove that the defendant, in making the distress, was acting not only without right, but without anything to justify him in supposing that he had a right to distrain,—in other words, that he was a mere trespasser, without any reasonable foundation for the claim set up.—15 W. R. 543.

13. When on the one hand a ryot institutes a suit to contest the demand of a distrainer, the Court has no option, but must adjudicate upon the demand. If on the other hand the distrainer has distrained "otherwise than according to the provisions of the Rent Act," he has done so at his peril, and rendered himself liable to an action for damages by the owner of the distrained property.—21 W. R. 331.

See Appeal 23, 117, 136, 178.
Cattle Trespass 4.
Damages 14, 69.
Fine 5, 9.
Fraudulent Removal or Concealment 1.
Jurisdiction 238, 240, 280, 508.
Limitation (Act X of 1859) 4, 8.
Money Decree 9.
Municipal 29.
Onus Probandi 147.
Putnee Talook 65.
Resistance to Distraint.

Divorce.

1. The finding in fact that there was a — need not be supported by the Mahomedan Law of Evidence, which is not the law of evidence by which the Courts in India are bound.—Sev. 449.

2. According to Mahomedan law, a — is irreversible if the husband does not take back the wife at any time before the *edit* or the period of a woman's probation.—W. R. Sp. 32.

3. According to Mahomedan law, the non-payment by the wife of the consideration for a —, does not invalidate the —.—(P. C.) 1 W. R., P. C., 57 (P. C. R. 445).

4. In this case the husband distinctly alleged a — by *khola*, and relied on an *ibranamah* (or deed of voluntary release by the wife of her dowry) as to which there was no satisfactory proof of her assent with the knowledge of its contents, and a *kholanamah* (surrendering the wife's settlement) obtained from her mother by means of cruelty and ill-usage practised on her daughter, to confirm the *ibranamah*,—*Held* that instruments so obtained could have no legal effect when used as a defence against the wife's claim to her dowry.—*Ib.*

5. The Mahomedan law does not declare the nature of the evidence required to prove a —.—2 W. R. 207.

6. *Quære.*—Whether the husband's statement that he has divorced his wife, is sufficient proof of the fact.—*Ib.*

7. An instrument of — signed by the husband in the presence of and given to the wife's father, was held to be valid, notwithstanding that it was not signed in the presence of the wife.—8 W. R. 23.

8. According to Mahomedan law, the — of one acting upon compulsion from threats is effective.—12 W. R. 460.

9. According to Mahomedan law, when the husband gives the wife an option as to declaring herself repudiated, such repudiation or — is binding on him, and a conditional discretion to repudiate may be absolute as regards time. Such option is not lost by non-user, unless its immediate exercise is rendered obligatory by the contract.—16 W. R. 260.

10. Although writing is not necessary to the validity of a — under Mahomedan law, yet where a — takes place between persons of rank and property, and where valuable rights depend upon the marriage and are affected by the —, the parties should, for their own security, have some documentary evidence of what they have done.—(P. C.) 20 W. R. 214.

11. In an appeal brought by the co-respondent against a judgment whereby the petitioner had obtained a dissolution of his marriage with his wife on the ground of her adultery with co-respondent,—*Held* that Act XIV of 1859 did not apply to suits for — *a vinculo*; that co-respondent's application for a commission to examine him should have been acceded to; that his general denial in his affidavit was not equivalent to what might have been a circumstantial denial or explanation of the facts alleged against him; and that the statements of the respondent were not evidence against the co-respondent.—(P. C.) 18 W. R. 480.

See Dower 3, 6, 7.
Forgery 22.
Husband and Wife 2, 10, 20, 32, 40.
Marriage 19, 31.
Sale 20.
Security 11.

Doctor.

See Medical.

Document.

S. 38 Act X of 1859 relates to the filing of a — forming the basis of a plaintiff's claim and not documents which are merely collateral evidence.—1 W. R. 263 (3 R. J. P. J. 329).

See Adjournment 8.
Construction 88.
Costs 29.
Court Fees 5.
Deed.
Evidence (Documentary).
" (Estoppel) 89.
" (Oral) 48.
Forgery 4.
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High Court 139, 164.
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Lost Document.
Pottah 26.
Practice (Appeal) 27, 28.
" (Suit) 7, 13, 19, 44.
Privy Council 18, 62.
Promissory Note.
Right of Suit 10.
Securities (Government).
Suit on Document.
Title Deeds.

Domicile.

Quære.—Whether a person, if his — of origin were Scotch, does not lose that — and acquire an Indian — by settling as an indigo planter in India and there dying.—(P. C.) 17 W. R. 35.

See Legitimacy 9.
Lex Loci.
Succession 1.
Will 31.

Donatio Mortis Causâ.

See Endowment 23.
Gift 2, 3, 16, 23, 30, 31, 38, 42, 43, 46, 50.
Tumleeknamah.

Doomraon Family.

See Gift 41.

Door.

See Easement 7.
Practice (Execution of Decree) 274.

Dower.

1. According to Mahomedan and English law, if a widow assents to any persons taking a legacy without putting forward her claim to —, it will operate as a waiver of her claim to realize her — out of the property so given up.—2 Hay 564.

2. According to Mahomedan law, ordinarily, — is of the nature of a debt, and is claimable before the inheritance can be divided. If a widow's — absorbs the whole estate, the whole estate becomes her absolute property, and she is not restricted to a life-interest in it, but may dispose of it at pleasure.—Sev. 665. *See* 20 W. R. 92.

So much of the above decision was reversed as ruled that the effect of the arrangement between a Mahomedan widow (a claimant for unpaid —) and her son, by which the son relinquished his share in his late father's property, was to give the mother only a life-interest (the son retaining the legal reversion); the Privy Council being of opinion that the creation of such a life-estate did not appear consistent with Mahomedan usage.—(P. C.) 17 W. R. 525.

3. According to Mahomedan law, *mojul* or exigible — is payable on demand at any time up to the death of the wife, and may be sued for within 12 years from that event. *Mowujjul* or non-exigible —is claimable on the dissolution of the marriage by death or divorce.— W. R. Sp. 199, 11 W. R. 212.

4. Shares of — when received by the legal inheritors thereof, cease to be — and become part of the recipient's estate.—*Ib.*

5. Where nothing is expected at the time of marriage, the — must, under the Mahomedan law, be considered exigible, and as such recoverable at any period during coverture.—W. R. Sp. 252 (L. R. 25).

6. Limitation is not applicable to a suit for exigible —, except where marriage is dissolved by death or divorce.—*Ib.*

7. According to the Punjab Code (held to be in force in Oude in the years 1859 and 1860), the — mentioned in a marriage-contract, instead of being enforced as an absolute deed, as claimed by the appellant, was held to be subject to a modification at the discretion of the Court, both in the case of a divorce and of the death of the husband.—(P. C.) 2 W. R., P. C., 55 (P. C. R. 754).

8. According to Mahomedan law, the deed of — is not necessary to prove a grant of —.—1 W. R. 31, 5 W. R. 23.

9. A verbal contract of — for a large sum is admissible only if proved by most clear and satisfactory evidence.—4 W. R. 110. *But see* 5 W. R. 23.

10. Nature of proof required to make out a customary —. —*Ib.*

11. A Mahomedan widow claiming — cannot take possession of her husband's estate as against the heirs, but must sue them regularly.—5 W. R. 194.

12. A Mahomedan wife's —, even though it is in the hands of her husband, is considered to be her estate, held by him in trust for her, and on her death, becomes divisible among her heirs; a suit by whom for her — is governed by the limitation applicable to suits to recover inheritance.—6 W. R. 111. *See* 11 W. R. 212.

13. Where a wife demanded only a portion of her — from her husband, limitation as to her claim to the remainder will count from the date of her husband's death and not from the date of her former demand.—6 W. R., C. R., 19.

14. The very best description of oral evidence is necessary to support a claim for — where no *kabinnameh* is produced.—7 W. R. 495. *See also* 11 W. R. 65, 15 W. R. 403.

15. The widow of a Mahomedan has a lien on her husband's estate for her — whether prompt or deferred, and may hold possession till the claim is satisfied.—8 W. R. 51, 9 W. R. 318, 10 W. R. 370 (*foot-note*). *But see* 11 W. R. 212, 15 W. R. 82.

16. Where a Mahomedan widow was deprived of a portion of such estate under a decree before the question as to her right of — was disposed of,—*Held* that the heir must be treated as having taken the property subject to a right of lien.—*Ib.*

17. Limitation under Act XIV of 1859 how applied in this case (*viz.* one to establish her lien).—*Ib.*

And generally to claims for — under the Mahomedan law.—13 W. R. 371.

18. How applied in the case of a Mahomedan widow suing to recover — payable on the death of her husband, if her plaint amounts to a money claim.—8 W. R. 307. *See also* 11 W. R. 212.

19. A claim for the money amount of — and a claim to establish a lien on property in respect to that amount are distinct causes of action.—*Ib.*

20. In a suit against a widow who has taken possession of her husband's property, where an absolute decree of right is given to her husband's heirs, no right of lien for — having been raised, the right of lien is a *res judicata.*—*Ib.* *See* 14 W. R. 272.

21. Where a Mahomedan widow had, after many years of possession under a claim of —, been compelled to make over one-sixth of her estate to her mother-in-law, and then sued her mother-in-law for one-sixth of her — without interest, she was held entitled to recover her claim without deduction on account of mesne profits.—(F. B.) 9 W. R. 318. *See* 14 W. R. 239.

22. A Mahomedan widow is entitled to a lien for whatever — remains due to her, although there may be a dispute as to the amount actually due.—10 W. R. 368. *See* 14 W. R. 239. (P. C.) 17 W. R. 113.

23. An heir to a share of a deceased Mahomedan's estate cannot recover possession from the widow so long as any part of the — remains unsatisfied. He may sue for an account of what is due as —, praying to be put into possession on satisfaction of that amount.—*Ib.* *See* 14 W. R. 239.

24. One who has a claim for — is exactly in the same position as any other creditor, and ranks *pari passu* with other ordinary creditors, having no special charge on the estate or preference of any sort; though —, like every other debt, must be paid before the heirs are entitled to take anything.—11 W. R. 212. *See also* 13 W. R. 49, 14 W. R. 239, 15 W. R. 82. (P. C.) 17 W. R. 525, 20 W. R. 92.

25. Where a widow was put in possession of the property of her husband, in order thereby to obtain payment of her — (10,000 Rs.), and she (and after her death, her heir) continued in possession for 15 years,—*Held* that there was a very strong presumption that the — was paid off, and that in a suit to recover possession from the heir, the proper course would be to direct an account to be taken.—(P. C.) 14 W. R., P. C., 5.

26. A Mahomedan widow *in possession of her husband's property* must be treated in the light of a mortgagee or pawnee so far as her — is concerned, and cannot be deprived of possession till her claim for — is satisfied.—14 W. R. 239.

27. A claim for — is not a lien on the property such as is obtained by a mortgage which enables the creditor to follow the property wherever it goes. The Mahomedan law has nowhere placed a claim for — as high as a mortgage, but has ranked it on a par with other debts.—*Ib.*

28. Neither the husband nor his creditors were allowed to assert a title against a Mahomedan lady in possession for twenty years of property given by him under a *kabinnameh*, on the ground that he had not at the time the property in his possession.—14 W. R. 279.

29. The hypothecation of an estate for — is a right that does not arise under the Mahomedan law as the consequence of a gift of —.—(P. C.) 17 W. R. 113.

30. The right of a widow in possession is founded on her power, as creditor for her —, to hold the property of her husband, until her debt is satisfied, with liability to account for the profits received.—(P. C.) *Ib.* *See also* 22 W. R. 118.

31. Presumption as regards amount of — claimed where the widow's possession is not interfered with for a long time.—(P. C.) *Ib.*

32. Where, in a suit by the widow of F, brought against F's heir-at-law for deferred —, it was found that no portion of F's estate had come into defendant's hands,—*Held* that, whether the property was in the hands of the plaintiff herself, or of a third party, a suit for a declaration of right would be premature.—19 W. R. 268.

33. In a suit for —, where plaintiff (appellant) had taken out no Certificate under s. 3 Act XXVII of 1860, the Privy Council remitted the cause to India to have it ascertained what amount of — was payable by the respondent to the estate of his deceased wife, and what, after payment of debts, was the share of — due to each co-sharer.—(P. C.) 19 W. R. 315.

DOWER (*continued*).

34. Where it is not expressed whether the payment of the — is to be prompt or deferred, the rule is to regard the whole as due on demand.—(P. C.) *Ib.*

35. Until the widows of a deceased Mahomedan have brought their suit for — against the son who is in possession, and who has mortgaged it, the property in the son's hands is not subject to a lien or charge in favor of them, and it passes free from incumbrances to the mortgagee.—20 W. R. 92.

36. In a suit by the heirs of a deceased Mahomedan to recover from his widow landed property of which she claims to be in possession as absolute owner under a *mokurruree* deed alleged to have been executed in lieu of her —, where she wholly fails to prove execution of the deed, it is competent to the Court, instead of referring the plaintiff to a separate suit, to direct an account to be taken of the mesne profits received by the widow and of the amount due to her on account of —, with a view to the settlement of the claims of both parties.—20 W. R. 297.

37. When a Mahomedan lady applied for leave to sue her husband *in formâ pauperis* for her — and the application was rejected, it was held not to constitute a demand for prompt — sufficient to set the period of limitation running.—24 W. R. 163.

See Bye-Mokasa.
Husband and Wife 10, 11, 19, 21, 26, 46.
Mortgage 71.
Onus Probandi 176, 279.
Small Cause Court 18, 39, 40.

Dowl-Durkast.

See Registration 85, 93.

Dowry.

See Divorce 4.
Husband and Wife 40.

Drain.

1. The obstruction of a — into which the sewage of complainant's premises fell, does not fall either under s. 308 or 320 Act XXV of 1861, but is matter for a Civil suit or injunction.—5 W. R., Cr., 58.

2. To justify a decree directing the closing of a new —, it is not sufficient for the — to cause annoyance to the plaintiff, but he must show that he has sustained special damage, with a probability of greater inconvenience and damage.—24 W. R. 189.

See Easement 4, 8.
Jurisdiction 230, 475.
Limitation 243.
Municipal 12.

Drainage.

See Embankment 3.
Water 4, 26.

Driving or Riding.

The actual driver, and not the owner of the carriage, is liable under s. 279 Penal Code for rash driving.—14 W. R., Cr., 32.

Drunkenness.

1. Voluntary —, though it does not palliate an offence, may be taken into account as throwing light on the question of intention.—W. R. Sp., Cr., 24.

2. Is no excuse for throttling a man to death, so as to bring the case within Exception 4 s. 300 Penal Code.—5 W. R., Cr., 58.

3. Does not in the eye of the law make an offence the more heinous, though it is no excuse; and an act which, if committed by a sober man, is an offence, is equally an offence if committed by one when drunk, if the intoxication was voluntarily caused.—16 W. R., Cr., 36.

Duress.

See Deed of Sale 1.
Onus Probandi 56.

Dur-ijara.

1. A dur-ijaradar and ijaradar had both defaulted in the payment of their rent respectively, and the zemindar attached the estate according to his agreement with the ijaradar. The dur-ijaradar having sued both the zemindar and the ijaradar for the profits of the estate during the term of his lease, it was held that the zemindar who had collected the profits, and not the ijaradar, was liable to pay the dur-ijaradar the profits of the estate over and above the rents.—2 W. R. 245.

2. Where two co-sharers took from a third co-sharer an ijara of her share on the stipulation that they would pay the Government revenue due upon her share taking credit for the same in the rent reserved, and leased out the same share in — to plaintiff, who, on the default of the two co-sharer-ijaradars to make such payment, paid it in,—*Held* that plaintiff might have brought her suit under s. 9 Act XI of 1859 against the co-sharers, in which case the Court might have directed recovery from the two co-sharers who as ijaradars had received the money; but that, as the suit was not brought under s. 9 Act XI of 1859, the ijaradars who had received the money, and not the third co-sharer, ought to have been sued under s. 69 Act IX of 1872.—25 W. R. 385.

See Enhancement 116.
Sub-Lease 3.

Dur-Putnee.

See Appeal 105, 122.
Contribution 23.
Costs 17.
Intervenor 2.
Jurisdiction 220.
Landlord and Tenant 58.
Lease 23.
Limitation (Act XIV of 1859) 20, 76.
Mesne Profits 65.
Pottah 29.
Practice (Possession) 32.
Putnee Talook 10, 12, 13, 20, 48, 49, 50, 51, 52, 54, 56, 69, 84, 85, 109, 114, 116.
Sale 208.

Dustoorut.

See Jurisdiction 442.

Dwelling.

See Dwelling House.
Residence.

Dwelling-house.

See Building 7.
Charge 3.
Hindoo Law (Coparcenary) 10, 35, 40, 47, 72, 74, 85, 86, 89, 95, 97.
" Widow 83, 84.
Jurisdiction 267.
Occupancy 61.
Partition 1.
Residence.
Special Appeal 89.
Summons 8, 10.

Dying Declaration.

1. Mode of determining admissibility of — under s. 371 Act XXV of 1861.—10 W. R., Cr., 11; 15 W. R., Cr., 11.

2. How a — was admitted under cl. 1 s. 32 Act I of 1872.—19 W. R., Cr., 44.

See Murder 26.
Rape 5.

Easement.

1. The prescriptive right to an — must be proved by an uninterrupted user.—1 W. R. 230. *See* 15 W. R. 296, 401; 16 W. R. 277.

2. The user must be proved, not inferred.—2 W. R. 213.

3. Whether in India or England, time and user create a right of — over the property of others.—6 W. R. 222.

4. Where a right of user of a drain or passage is incidental to a house, it is not affected by the owner of the house letting the house to a tenant.—6 W. R. 314.

5. The rule that the right to an — goes with the property when sold by the owner himself, applies also when the property is sold by the Court in execution of a decree against him.—22 W. R. 522.

6. If the alterations which a man makes in his property before alienation of any part of it are palpable and manifest, and in their nature permanent changes in the disposition of the property, so that one part thereof becomes dependent on another, the purchaser of either part must take the land either burdened or benefited, as the case may be, by the qualities thus attached thereto.—24 W. R. 345.

7. On a severance of tenements, an — in its nature continuous would pass by implication of law without any words of grant.—*Ib.*

8. A party may be entitled to keep a doorway open so long as it is used as a means of getting air and light, without interfering with the privacy of neighbours; but he will not be entitled to use it as a means of getting an — (in the shape of a drain, for instance) over another's land.—25 W. R. 221.

See Embankment 3.
Lease 54,
Limitation (Act IX of 1871) 11, 16, 17, 37, 38.
Onus Probandi 179, 247.
Partition 17.
Possession 18.
Prescription.
Right of Way.
Right to Light and Air.
Water.

East Indian.

Act XXV of 1838 applies to the will of an — whether domiciled within or beyond the Testamentary Jurisdiction of the High Court.—2 Hyde 3.

See Marriage 4.
Succession 1.

Ejectment.

1. Effect of unlicensed transfer of leases.—W. R., F. B., 8 (1 Hay 62).

2. The receipt of rent for one year by the landlord bars his right to eject the tenant for non-payment of rent due up to the end of the preceding year.—W. R., F. B., 10 (1 Hay 89, Marshall 25).

3. Unlawful eviction, though it would put an end to a ryot's possession, would not destroy his holding or his right to hold at the particular rent at which he was holding.—W. R., F. B., 91 (2 Hay 460), 22 W. R. 487.

3*a*. An application to a Collector under s. 25 Act X is not a suit.—(F. B.) W. R., F. B., 118. *See also* 11 W. R. 145.

And should be received upon a stamp of 8 annas.—11 W. R. 90.

4. Jurisdiction of Civil Court for — of tenant after expiry of lease.—(F. B.) W. R., F. B., 125 (1 R. J. P. J. 110, Sev. 89).

5. Of lakherajdar by zemindar under s. 10 Reg. XIX of 1873.—W. R., F. B., 174. *See also* 1 Hay 418, 2 W. R. 308, 8 W. R. 160.

6. An auction-purchaser of a zemindaree sold for arrears of revenue cannot, under s. 26 Act I of 1845, eject a holder of a lakheraj tenure though held under an invalid title.—2 Hay 121.

7. In a suit for — the plaintiff must establish a superior title to that of the defendant before he can obtain a decree.—2 Hay 303.

8. If a person evicted without legal process from land in his occupation, sues for possession under Act X of 1859, he is bound to show title.—2 Hay 434 (Marshall, 389), 7 W. R. 36, 13 W. R. 21.

9. S. 78 Act X of 1859 does not empower a landlord to eject his tenant for non-payment of rent due in the middle of a year. The right of — for such default is maintainable, under s. 21, only for arrears due at the end of the year.—2 Hay 438 (Marshall 348). *See also* 5 W. R. (Act X) 45 and 77 *post*.

10. A lease contained a stipulation that the ryot should give up such part of the land as was unfit for the cultivation of indigo, and should not sub-let the same. *Held* that, as the lease contained no proviso for forfeiture or right of re-entry for the breach of this covenant, the landlord was not entitled, upon such breach, to maintain an action for — under cl. 5 s. 23 Act X of 1859. 2 Hay 451 (Marshall 366) 2 W. R. (Act X) 101.

11. In a suit for —, under s. 78 Act X of 1859, against A on the ground of non-payment of rent, B has no right to intervene and be made a defendant on the allegation that he is really tenant of the land in question.—2 Hay 452 (Marshall 374). *See also* 6 W. R. (Act X) 51.

12. A zemindar cannot eject a ryot under a decree passed under s. 78, if a third party pays in the amount of the decree on the allegation that he has purchased the right and title of the original tenant.—2 Hay 527 (Marshall 427). *See* 13 W. R. 240.

13. A decree in a suit for — of a ryot for non-payment of rent was modified upon review, by reducing the amount of arrears awarded to the plaintiff. *Held* that the amended decree was the final decree in the suit, and that the ryot was entitled, under s. 58 Act X of 1859, to 15 days from its date for payment of the arrears with costs and interest.—2 Hay 595 (Marshall 471).

So as to s. 52 Act VIII of 1869 (B. C.).—18 W. R. 477.

14. Under s. 21 Act X of 1859 a ryot is not liable to — for non-payment of rent due for the first 10 months of the year, but only for arrears of rent due at the close of the Bengalee year.—1 R. J. P. J. 50 (Sev. 23).

15. An — is not illegal because it took place before the party ousting obtained a pottah from Government.—1 R. J. P. J. 212.

16. In a suit for —, where the question of a right of occupancy arose upon the pleadings, it was held essential to decide this point, though the pottahs on which defendant rested his tenancy were clearly forgeries.—2 R. J. P. J. 87, 3 W. R. 208.

17. In a suit for rent and — under s. 78 Act X of 1859, where the defendant adduced an old unsatisfied decree and also alleged a current balance, and the Judge in giving the decree only specified the current balance, it was held that, by paying this only, the ryot saved himself from —.—W. R. Sp. (Act X) 29 (2 R. J. P. J. 152).

18. S. 25 Act X of 1859 does not apply to a case where the defendant is not a cultivator or tenant to the plaintiff but relies on a forged title adverse to the plaintiff's right to collect the rents direct from the tenant.—Sev. 157.

19. No — can take place without due process of law, anything in a lease to the contrary notwithstanding.—Sev. 249.

20. Persons in possession of a julkur cannot be legally summarily ejected therefrom, nor can the julkur pass from their legal possession into the hands of Government without a decree of Court in favor of Government after a regular suit for the establishment of its right and title.—Sev. 373.

21. Where an application for — was made to the Collector under s. 28 Act X of 1859, the order of the Collector ruling that the person making the application had failed to show the land in dispute to have been *mál* since 1790, was held

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to be not conclusive against such person on the whole case, or as establishing the title of the opposite party, to try which a regular suit may be brought.—2 R. J. P. J. 365.

22. In a suit under cl. 6 s. 23 Act X of 1859, if the defendant does not dispute the tenancy of the plaintiff, the proper issue for trial is not whether the plaintiff had a right of occupancy under s. 6, but whether he was illegally ejected or not; and if illegally ejected, the plaintiff is entitled to recover possession, leaving the defendant to appeal to the Collector to eject him under s. 25 if the plaintiff be a ryot without a right of occupancy.—2 R. J. P. J. 371 *See* 65 *post*.

23. An — by a zemindar without application made to the Collector under s. 25 Act X of 1859 is not necessarily illegal.—W R. Sp. (Act X) 68 (2 R. J. P. J. 308), 1 W. R. 191 (3 R. J. P. J. 228). *See* 65 *post*.

24. A zemindar who purchases his ryot's rights and interests in the land after their sale for valuable consideration to another party, cannot oust the *bonâ fide* purchaser. —W. R. Sp. (Act X) 91 (3 R. J. P. J. 19).

25. Where a person became surety for the due performance by the lessee of the obligations contained in a lease for a term of years, and afterwards became a partner with the lessee, and the lessor evicted the lessee before the expiration of the lease,—*Held* that a suit would lie by the surety for damages arising from the illegal —, although the surety was not a party to the original contract with the lessor. Explanation of the principle of assessing the damages.—(P. C.) 7 W. R., P. C. 51 (P. C. R. 191).

26. It is optional with the lessee, on being dispossessed by his lessor before the expiry of his lease, either to sue for specific performance of contract for the remaining period of his lease, or for damages arising out of the breach of contract.—1 W. R. 49.

27. In a suit for — plaintiff must succeed by the strength of his title only, not by weakness of defence.—1 W. R. 88.

28. Mode of —, under s. 25 Act X of 1859, of ryots having right of occupancy.—1 W. R. 119. *See* 65 *post*.

29. It is not necessary that the zemindar should be made a party to a suit for dispossession brought by one ryot against another.—1 W. R. 140.

30. Nor can a decree be given against the zemindar as the ousting party in a suit for dispossession brought by a party against his co-sharers.—1 W. R. 140.

31. An — effected through a Magistrate is still an — by the landlord and illegal if the tenant be entitled to retain possession.—1 W. R. 269 (3 R. J. P. J. 331).

32. Such —, whether from the whole tenure or a portion, is cognizable only in the Revenue Court under cl. 6 s. 23 Act X of 1859.—*Ib.*

33. A suit for — does not lie under cl. 6 s. 23 Act X of 1859, unless there has been an illegal — by the party entitled to receive the rents, and not where the contention is between two rival ryots.—1 W. R. 313. *See also* 6 W. R. 292; 7 W. R. 186, 459.

34. The — by the zemindar of a defaulting holder of a tenure transferable by sale, without application to any Court, is illegal under cl. 7 s. 15 Reg. VII of 1799.—2 W. R. 154.

35. One of several joint lessors can eject a lessee after expiry of the lease.—2 W. R. 290.

36. Under cl. 6 s. 23 Act X the — of a putneedar by the zemindar is illegal except on proof of the invalidity of the putneedar's title.—2 W. R. (Act X) 3 (4 R. J. P. J. 19).

37. S. 25 Act X does not apply where plaintiff admits that defendant has a pottah, but questions the authority of the naib who granted it. The appeal in such a case lies to the Judge and not to the Commissioner.—2 W. R. (Act X) 16 (4 R. J. P. J. 49).

38. Where a tenure is transferable, the mere absence of registration or of acknowledgment of the zemindar's right by the ryot, will not make the ryot such a trespasser as to justify the zemindar in evicting him in the middle of the year.—2 W. R. (Act X) 19 (4 R. J. P. J. 49), 8 W. R. 96.

39. A pottah for a term of years is not inconsistent with a right of occupancy; and thus a ryot with a right of occupancy, though holding under a pottah for a term of years, cannot be ejected by his landlord, unless the latter can prove a stipulation under s. 7 Act X.—2 W. R. (Act X) 54 (4 R. J. P. J. 154).

40. S. 25 Act X is limited to applications for — on determination of lease.—2 W. R. (Act X) 101. *See* 65 *post*.

41. A tenant is liable to — if he has been admitted to possession by some only of the coparceners of a joint property, in the absence of any special custom giving them authority for such admission.—4 W. R. (Act X) 39. *But see* 5 W. R. (Act X) 93, 12 W. R. 452.

42. The transfer of a tenure not transferable by the custom of the country, does not cause a forfeiture of the tenant's rights, or entitle the zemindar to evict such tenant or any one holding under him and take actual possession of the land himself, so long as the rent is paid by the recorded tenant or his heirs and not by a stranger.—5 W. R. 147. *See* 20 W. R. 139.

43. An — alleged to have taken place under direct action of Court and supported by documents issued by and filed in the Court, must be presumed to have been real and *bonâ fide* until the party ejected proves the contrary.—5 W. R. 180.

44. A party aggrieved by an order of a Deputy-Collector passed under s. 25 Act X, may sue under cl. 6 s. 23, whether he was illegally ejected directly by the landlord, or indirectly by him through the Deputy-Collector.—5 W. R. (Act X) 46, 6 W. R. (Act X) 21. *See* 65 *post*.

45. A plaintiff ousted by the real defendant is not barred from suing in the Civil Court until the real defendant and the zemindar defendant settle any dispute between them by a suit under Act X.—5 W. R. (Act X) 52.

46. Persons holding over after the expiry of their lease are mere trespassers and cannot sue under cl. 6 s. 23 Act X. —5 W. R. (Act X) 95.

47. Where a lakherajdar, ousted by a pottahdar, sues to recover possession, he should be restored to possession, and the zemindar be left to sue for resumption and assessment. —6 W. R. 190.

48. Dependent talookdars, re-admitted to temporary settlements, are not liable to — at the close of those settlements.—6 W. R. (Act X) 26.

Or to forfeiture of their leases by simply omitting to renew their temporary settlements.—21 W. R. 26.

49. Under s. 78 Act X, a decree for — must be conditional on the defendant not paying the decreed rent within 15 days.—6 W. R. (Act X) 37, 64. *See* 66 *post*.

50. A decision under Act X is not final in a mere suit for — under cl. 6 s. 23 or s. 25, which depends on the question of possession and illegal dispossession only.—6 W. R. (Act X) 44.

51. S. 78 Act X is not confined to suits for — or cancelment of lease on account of non-payment of rent only, but on account of breach of contract also.—6 W. R. (Act X) 64, 7 W. R. 374, 8 W. R. 138, 11 W. R. 201. *See* 66 *post*.

52. An auction-purchaser's right of — under Act I of 1845 has been modified by s. 1 Act X.—6 W. R. (Act X) 102.

53. S. 22 Act X does not contemplate a suit for — after the landlord has sued for and realised the arrears of rent due.—7 W. R. 20.

54. An eviction under s. 82 Act X, if by means of a collusive and fraudulent decree, is remediable under that Act.—7 W. R. 24.

55. Where *howala* and *neem-howala* tenures, recorded as rightful tenures of those classes at the first settlement, have never been set aside by the Revenue authorities, the holders are not liable to — under s. 32 Act XI of 1859 so long as they pay their settlement jumma.—7 W. R. 50.

56. The decision of a Deputy-Collector declining jurisdiction in a suit for — under s. 28 Act X, though upheld in appeal by the Judge, is no bar (either in the way of *res judicata* or otherwise) to a suit for ouster in the Civil Court. —7 W. R. 97.

57. Cannot be allowed for failure to clear a defined area by a certain time, unless stipulated for in the lease.— 7 W. R. 209.

58. No subsequent interruption by A in B's occupation of land is an answer to A's claim for rent which had previously accrued. B's eviction will not relieve him of a liability which accrued due prior to eviction.—8 W. R. 54. *See* 24 W. R. 219.

59. A plaintiff obtaining declaration of title and confirmation of possession cannot eject a defendant without a fresh suit under Act X.—8 W. R. 281.

60. The purchaser of a jote is not bound by a subsequent decree against the vendor, but holds under s. 21 Act X,

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and can only be ejected by means of a suit against himself. —8 W. R. 337. *See also* 8 W. R. 96.

61. In a suit under cl. 5 s. 23 Act X, the question of illegal — is the only question for adjudication, and the *onus probandi* in such a case is upon the plaintiff.—8 W. R. 388.

62. A tenant in possession after expiry of his lease can only be ejected by due course of law (s. 25 Act X); and if illegally dispossessed, he is entitled, under s. 15 Act XIV of 1859, to sue and recover possession, notwithstanding a pottah set up by defendant.—9 W. R. 123. *See* 65 *post*.

63. A party in legal possession under a lease from a lakherajdar cannot be summarily ejected by the zemindar without the intervention of the Court.—9 W. R. 168.

64. Proprietors are not entitled to oust their co-proprietors from lands which the latter have, as tenants, brought into cultivation.—9 W. R. 291.

65. If a landlord ejects a tenant of his own authority and without the intervention of a Court of Law or of the Collector under s. 25 Act X, and the ryot sues in the Civil Court under s. 15 Act XIV, he will be entitled to recover possession without reference to the title of the landlord; but if he sues in the Collector's Court under cl. 6 s. 23, he can recover possession only upon proof of illegal —, *i.e.* that the tenancy was not at an end.—(F. B.) 9 W. R. 513. *See also* 11 W. R. 168, 13 W. R. 417, 15 W. R. 152.

So also under s. 27 Act VIII of 1869 (B. C.).—21 W. R. 123, 23 W. R. 460.

Where the termination of tenancy is not proved, the tenant need not prove right of occupancy.—23 W. R. 387.

66. In a suit for the cancelment of a lease on account of a breach of its conditions, the breach complained of consisting in the non-payment of rent for a particular period specified in the lease, the lessee is entitled to avail himself of the proviso in s. 78 Act X, that section applying to all suits for the — of a ryot or for cancelment of lease for non-payment of rent.—(F. B.) 10 W. R., F. B., 12.

So as to s. 52 Act VIII of 1869 (B. C.) which corresponds to s. 78 Act X.—18 W. R. 477.

But applicable only to ryots, and not to talookdars.—22 W. R. 376.

66*a*. A ryot who has held without any period having been fixed for the duration of his tenancy, although he may not have gained a right of occupancy, cannot have his holding determined without reasonable notice to quit: and a notice given in the last month of a current year would not be sufficient.—(F. B.) 10 W. R. 33.

According to s. 8 Act VIII of 1869 (B. C.), the landlord has a right to make his own terms with the tenant or to turn him out of occupation by serving him with a reasonable notice to quit unless he agrees to pay the rent required.—22 W. R. 548.

Such notice need not be confined to a simple demand of possession and notice to quit on a certain day. It is sufficient if the landlord asks for a higher rate of rent and gives the ryot notice to quit if he declines to pay it.—23 W. R. 440.

A tenant-at-will who has been duly served with a notice to quit, may be successfully sued for —.—24 W. R. 461.

A ryot whose tenancy can only be determined by a reasonable notice to quit expiring at the end of the year, can claim to have a suit for — brought against him by his landlord dismissed on the ground that he has had no such notice.—(F. B.) 25 W. R. 329.

67. A farmer having no permanent interest in land has no transferable interest, and cannot be ejected except in execution of a decree or order under Act X.—10 W. R. 26.

68. In a suit under cl. 5 s. 23 Act X for *khas* possession of a farm, based on a contract providing that, on default in payment of rent, the lessor should seek a decree for arrears and should be entitled to enter on *khas* possession if the arrears were not paid within 15 days of the execution,—*Held* that plaintiff should have brought his suit under s. 78 and obtained a decree for —.—10 W. R. 156.

69. A zemindar who sells, in execution of a decree, the rights and interests of a tenant, is not bound to give the purchaser notice before — under a decree for arrears of rent and — under s. 78 Act X, if the latter has not had his name registered in the zemindar's sherista.—10 W. R. 304. *But see* 10 W. R. 494.

70. Where a Deputy-Collector who had decreed a suit for — on proof of arrear due, held afterwards in execution that, as the arrear had been paid up within 15 days, the tenant could not be ejected according to s. 78 Act X, his order in execution was declared to be *ultra vires* and illegal.—10 W. R. 345.

71. Tenants long in possession and paying rent cannot be summarily ejected in an action by an alleged purchaser suing for possession; they can only be ejected in a suit in the Revenue Court by the person entitled to receive rent.—11 W. R. 509.

72. A landlord who ejects his tenant illegally and holds possession as a wrongdoer, although he settles another tenant on the land, is liable not only for the rent he receives during such possession, but also for damages consequent on —.—12 W. R. 101.

73. Where a tenant is sued for rent, he may set up eviction by a title paramount as an answer; and if so evicted from part of the land, an apportionment of the rent may take place, the *onus* being on the lessor to show what is the fair rent to be paid for the portion remaining in the tenant's occupation.—12 W. R. 109. *See also* 22 W. R. 542.

74. Where a tenure is transferred without the landlord's sanction, and the landlord receives rent from the transferree and gives him receipts for the year he is in possession, he cannot afterwards oust him under a decree for the rent of previous years.—12 W. R. 396.

75. Under the Sale Law as it existed before 1822, a talookdar could not be dispossessed at the will of the purchaser; he was at most liable to pay the full pergunnah rate and could only be ejected after refusal to pay the enhanced rate; but under Reg. XI of 1822, dependent talooks created subsequent to the Decennial Settlement were liable to be wholly avoided and annulled at the option of the purchaser at a sale for arrears of Government revenue unless they fell within the class contemplated by s. 32 of that Regulation.—(P. C.) 13 W. R., P. C., 21. *See* 18 W. R. 469.

76. An order that there should be a proceeding to execute under s. 78 Act X is an order for —.—13 W. R. 240.

77. The principle which applies to the case of ryots, applies also to the case of middlemen, *viz.* that the latter cannot be ejected by the zemindar without a reasonable notice, expiring at the end of the year.—13 W. R. 267. *See* 9 *ante*.

As to — of ryots having a right of occupancy, without notice. *See* 21 W. R. 332.

78. A zemindar may be said to dispossess a tenant who does not personally occupy the land, by inducing the tenant's under-tenants to pay rent to him (the zemindar).—14 W. R. 58.

And so as to any person obliging the tenants of an estate to pay their rents to him; the dispossession entitling the party wronged to sue for declaration of title.—14 W. R. 183.

79. Where a decree for — was passed under s. 78 Act X, and the defendant urged in special appeal that he ought to have been allowed 15 days' time under that section to pay the money,—*Held* that it was quite within his power, after the decree was passed, to invoke the benefit of the section, and that he could not be allowed to make the objection in special appeal.—14 W. R. 178.

80. Where land is held jointly and there is no partition, one part-owner cannot insist on the — of a person who has been holding under the other part-owner for a number of years.—14 W. R. 183. *See* 20 W. R. 70.

81. There is nothing in s. 15 Act XIV which deprives a party of his right to institute proceedings under s. 25 Act X, instead of proceeding under s. 15 Act XIV by a suit in the Civil Court.—14 W. R. 417.

82. A suit on the ground of illegal — effected by the zemindar or by a servant acting under him, will not lie under Act X when the defendant is the ijaradar entitled to the rents.—15 W. R. 18.

83. A mere change in the proprietory title of an estate does not entitle a putneedar who holds from the new proprietor, to eject a tenant who can prove a right of occupancy.—15 W. R. 417.

Nor the new proprietor to eject putneedars in possession. —17 W. R. 376.

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84. One of several co-sharers cannot sue to evict a tenant of land which belongs to them all.—16 W. R. 188. *See* 20 W. R. 126.

85. The 15 days' grace allowed to a lessee prior to — cannot be negatived by any condition in the lease.—16 W. R. 151.

86. In a suit for rent where lessee pleaded —, his defence was held to have failed because he was unable to show that his lessors had no title and that the persons who ousted him had a title.—17 W. R. 386.

87. The Court cannot in special appeal go behind a decree for — and hold that the tenure in question was of that character that no order for — could pass.—17 W. R. 421.

88. Payment into Court by a judgment-debtor, within 15 days from date of decree, of rent, interest, and costs, with protest as to interest, is a sufficient payment under s. 52 Act VIII of 1869 (B. C.) to save him from —.—17 W. R. 462.

89. In a suit for —, the Court in special appeal declined to allow the defendants to take the objection not taken in the Lower Courts, that plaintiff, having allowed him to hold over and to cultivate with indigo, could not eject him without sufficient notice to quit at least until the indigo season was over.—18 W. R. 148.

90. A decree for — under s. 78 Act X, made in a suit for arrears of rent of a transferable tenure to which a person claiming as mortgagee was no party, cannot confer upon the decree-holder (the purchaser in execution of a decree against the mortgagor) the right to avoid the mortgage, and is no bar (under s. 2 Act VIII) to a suit by the mortgagee to question the validity of the decree and the Collector's power to make it.—18 W. R. 206.

91. The only suits for — contemplated by Act VIII of 1869 (B. C.) are those for non-payment of arrears of rent. A suit for — from land assigned for building purposes, brought upon a contract, is not barred by reason of an order for — on an application under s. 25 Act X.—18 W. R. 208.

Act VIII of 1869 (B. C.) relates only to agricultural holdings.—25 W. R. 136.

92. Where a tenant, not having paid the amount of the decree against him for arrears of rent within 15 days, was held by the first Court to be liable to —,—*Held*, with reference to s. 52 Act VIII of 1869 (B. C.) and also s. 78 Act X of 1859, that the Appellate Court had discretion to extend the time.—18 W. R. 412. *But see* 22 W. R. 460, 23 W. R. 50.

93. Where two co-sharers granted two separate leases, each co-extensive with the share of its grantor, and after the expiration of the term thereof, one of the co-sharers granted the lessee a new lease in respect of his share only, —*Held* that the lessee had no right of occupation as respects the other share, the owner of which was entitled to eject the lessee as holding over after the expiration of his lease.—20 W. R. 70.

94. Where plaintiff purchased a house on the land in dispute 13 years before the institution of the suit, and after occupying it for 4 years, left the district, paying no rent for the next 7 or 8 years, whereupon the zemindar put the defendant in possession and took rent from him,—*Held* that plaintiff had no right to eject defendant.—20 W. R. 129.

95. Eviction from part of the demised property may either give the tenant a cause of action for damages or for suspension or abatement of rent.—20 W. R. 347.

95*a*. A decree for ejecting a tenant-at-will at the commencement of the next Bengalee year, was held to be ample notice to quit.—20 W. R. 401. *See also* 23 W. R. 271, 440.

96. A party who is under an obligation by the terms of a decree not only to pay arrears of rent but also to give up possession, is allowed by s. 52 Act VIII of 1869 (B. C.) relief from the operation of the latter portion of the decree if he pays the money decreed within 15 days of the date of the decree.—21 W. R. 11, 22 W. R. 511, 23 W. R. 50.

97. In a suit for — of lessee after termination of lease, neither consent nor ratification can be inferred from plaintiff allowing defendant to hold over for a year or two and then demanding a higher rent which defendant refused to give. —21 W. R. 55.

98. D, after having given a *kutkeena* pottah of a certain village to M, granted another *kutkeena* pottah of the same land to R who obtained possession under his pottah. M then sued D and R for — and to recover possession,—*Held* that M's remedy lay in an action for damages and that he could not claim specific performance unless R raised no objection to giving up possession.—22 W. R. 7.

99. Where a suit for — was dismissed on the ground that defendant was not a trespasser but a tenant, and plaintiff sued again on the allegation that defendant was now a trespasser though lately a tenant,—*Held* that the suit, though not barred by s. 2 Act VIII, must be dismissed as plaintiff had not terminated the tenancy by giving defendant reasonable notice to quit.—22 W. R. 115.

100. Where a tenant is rightfully occupying land under some one who represents the landlord, he cannot be ejected before his tenancy has terminated, even though he has no right of occupancy under s. 6 Act VIII of 1869 (B. C.).—22 W. R. 195.

101. A putneedar desirous of ejecting a tenant whose lease has expired, need not give him a written notice to quit; a verbal notice being sufficient.—23 W. R. 312.

102. In a suit for — where defendant pleaded possession under a pottah granted to him upon the loss of a *mourosee mokurruree* pottah, and the first Court, concluding that the pottah had not been proved, nevertheless found that defendant had acquired a right of occupancy by holding as a tenant more than 12 years, and dismissed the suit,—*Held* that the Lower Appellate Court, upon the plaintiff's appeal, ought not to have gone beyond the judgment of the first Court and added a superfluous finding as to the genuineness of the pottah.—23 W. R. 332.

103. Where land is given to a lessee for the purpose of building a house to live in, without any term being fixed for the tenancy, the tenure of house and land cannot be taken from the lessee's heir or his vendee so long as he continues to pay the rent assessed on it.—23 W. R. 399.

104. Where tenants have obtained a right of occupancy under s. 6 Act VIII of 1869 (B. C.), a suit for — against them can only be brought under that Act.—23 W. R. 411.

105. Plaintiff having sued to eject defendant from his land on the ground that defendant's lease had expired, did not succeed because he failed to prove the kuboolcut. He now sued to eject defendant after notice to quit. *Held* that in the former suit defendant was treated as a trespasser, but in the latter as a tenant-at-will; and that the cause of action in the one case was different from that in the other.—24 W. R. 172. *See also* 25 W. R. 418.

106. With reference to ss. 52 and 54 Act VIII of 1869 (B. C.), the word "reversed" was taken to mean, not reversed *in toto*, but reversed in respect of that part of the arrears which the ryot contests in the Appellate Court. —21 W. R. 182.

107. A landlord by dispossessing his tenant in the middle of the year does not, in all cases, forfeit his right to rents which have already accrued due. Whether he does or not must depend on circumstances, *e.g.* upon the question whether the ryot has enjoyed all the year's profits, or has been prevented from enjoying any by the landlord's act of interference.—24 W. R. 219.

108. Where a judgment-debtor complied with the terms of a rent-decree as he found them in the certified copy issued to him, he was held protected from — even though the amount paid (owing to an error in the copy) was less than the amount really due.—25 W. R. 57.

109. Where land is held under an agreement of perpetual lease, the lessee cannot be ousted without notice to quit.—25 W. R. 104.

110. Where a Judge decreed a suit for — on the ground that it was alleged in the plaint that the defendant's tenancy was terminable and had terminated, and that the defendants had not raised in their statement the question of its actual termination, the grounds of the affirmative conclusion were held to be insufficient in law, the defence having been that the tenancy was not terminable.—25 W. R. 107.

111. The mere fact that a building has been erected on a piece of land with the consent of the proprietor does not give to the occupant a right to hold the land perpetually at the same rate; and if the proprietor, with an ultimate view of raising the rent, brings a suit for —, he has a right to have his title to eject tried in that suit, but he is not at liberty, after defendant's statement is filed, to withdraw

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his original claim and substitute one for enhanced rent.—25 W. R. 136.

112. If a tenant holds for a term of years, and no new tenancy is created by the zemindar after the termination of the lease, either by receipt of rent or otherwise, and if the tenant has no other title to the land besides the lease, the zemindar is entitled to evict him, on the expiration of the lease, without the intervention of a Court.—25 W. R. 201.

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Embankment.

1. An — is not an incumbrance liable to be extinguished under s. 26 Act I of 1845, which refers only to tenures and leases.—W. R., F. B., 17 (1 Hay 118).

2. Government held liable for rents of land not legally and formally taken possession of by its officers for an —. —W. R., F. B., 18 (1 Hay 122, Marshall 56).

3. A proprietor who, by erecting an — in his own land, impedes the flow of surface drainage water from the higher land of another proprietor, is liable to pay damages on proof of actual resulting loss.—W. R., F. B., 25 (1 Hay 152, Marshall 85).

4. In a suit for reduction or removal of an —, plaintiff must establish not only injury, actual or prospective, but an injury caused by an infraction of right possessed by plaintiff.—10 W. R. 435, 11 W. R. 2.

5. Where fresh bunds are erected every year to the injury of a riparian proprietor, each act of setting up a bund constitutes a separate cause of action—13 W. R. 48.

6. In a suit for damages for the demolition of a *singha* or — intended to keep in surface water, if the — was situated on the defendant's land, such demolition could only be a cause of action where it not only infringed a definite right but caused actual damage.—15 W. R. 250.

7. A party claiming to erect a bund in a natural flowing river so as entirely to cut off the water from another party, is bound to prove that he has acquired the legal right to do so by user.—15 W. R. 516.

8. A Magistrate has no authority to order the cutting of a bund or otherwise to interfere with it, except by a proceeding under chap. XX Act XXV of 1861.—16 W. R. 63.

9. In a suit to close a bund cut by defendant and for an injunction to restrain him from injurious cuttings in future, it is material to decide the question as to the property in the bund, and if that be found in favor of defendant, to try whether he has so used his property as to injure plaintiffs according to the maxim "*sic utere tuo ut alienum non lædas*."—17 W. R. 359.

See Custom 2.
Damages 21, 42, 68.
Julkur 5.
Jurisdiction 440.
Mischief 4.
Practice (Execution of Decree) 148.
Res Judicata 15.
Water 20, 22, 23, 24.

Enam Grants.

1. Cannot deprive the Meymoodars of their hereditary rights.—(P. C.) 5 W. R., P. C., 121 (P. C. R. 84).

2. Resumption or forfeiture of — under Reg. IV of 1831 (Madras Code).—(P. C.) 12 W. R., P. C., 33.

See Mortgage 245.

Encroachment.

1. If a ryot has encroached upon land which he cannot distinguish from his rightful holding, the presumption is that he has encroached upon the best land.—W. R. Sp. (Act X) 44 (2 R. J. P. J. 207).

2. A landlord cannot sue his lessee's tenant to clear the land of buildings and trees raised by — after the commencement of the lease, until after the expiration of the lease.—8 W. R. 512.

3. A suit for damages was held to be justified against a defendant who encroached upon a public thoroughfare where such — caused plaintiff damage (by undermining his wall) and inconvenience beyond, and in excess of, what his neighbours suffered.—21 W. R. 408.

4. A suit for the removal of an — is maintainable without actual damage having occurred, or the immediate prospect of damage, if it can be shown that some damage may arise from the — hereafter, when, from plaintiff's neglect to interfere for a series of years, the opposite party would possibly have acquired a right which would bar plaintiff's remedy.—22 W. R. 73. *See also* 25 W. R. 521.

5. Excess land.—*See* Land 5.

6. The true presumption as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant so long as the original holding continues and afterwards for the benefit of his landlord, unless it clearly appeared that the tenant made the — for his own benefit.—22 W. R. 246.

7. Where the lands encroached upon have been added to the tenure, the tenant, if his tenancy is permanent or he has a right of occupancy, cannot be ejected from them while the tenure lasts; but when the rent is re-adjusted, these lands may be brought into the calculation.—*Ib.*

See Jurisdiction 162, 246, 509.
Limitation 154.
Mischief 4.
Nuisance.
Obstruction 4.

Endowment.

1. According to Mahomedan law, a valid — may be verbally constituted without any formal deed—2 Hay 415.

2. The mere fact of the proceeds of a piece of land having been appropriated for the worship of an idol, does not constitute it an endowed property, but the fact of the assignment to the idol must be specifically proved.—2 Hay 490. *But see* 8 W. R. 42, 20 W. R. 267.

Nor does the mere fact of land having been released by Government as appropriated to the services of an idol impose on it the character of a religious — so as to exempt it permanently from attachment and sale in execution of a decree against a person who may hold it.—21 W. R. 365.

3. A decree obtained honestly against a *sebait* is binding on his successor.—Marshall 485, 20 W. R. 86, (P. C.) 23 W. R. 253.

4. Effect of a will by a *mohunt* appointing his spiritual brother as his successor with a direction as to the person who should be the latter's successor.—2 Hay 633 (Marshall 573).

Affirmed on appeal by the Privy Council—8 W. R., P. C., 25.

5. *Wuqf* property not being partible, defendants having been appointed by the trustee of a moiety of the property to succeed to the office of trustee of the —, were held to have a good title both by limitation and otherwise. —Sev. 316.

6. Where the owner of a Mahomedan — was dispossessed of it by a Hindoo and for 17 years took no steps to recover it,—*Held* that, even if the rule of Mahomedan law as to the inalienability of *wuqf* property applied, the former's suit to set aside a putnee lease granted by the latter and to recover possession of the land, was barred by limitation, whatever the rights of his successor might be, even if he were not also disabled from suing to set aside the lease, on the ground that, if the transaction was illegal, he was *in pari delictu.*—Sev. 501.

7. Neither under Reg. XIX of 1810 nor by Mahomedan law have the Civil Courts any jurisdiction to enforce the performance of the trusts of an — or to displace trustees who are faithless to the trusts reposed in them.—Sev. 585.

8. Mismanagement is a good ground for the interference of the Court; and although *wuqf* property is not deemed a subject of inheritance, yet persons who are of the founder's kin would be entitled to sue a manager who was wasting the property, and, if qualified themselves, might have a claim to succeed the disqualified person in the management, and to manage the trust in conformity with the intention of the founder.—Sev. 679.

9. Land granted to an idol as *debuttur* must be found to be ancient hereditary *debuttur* publicly assigned as such prior to the donor's incumbency.—W. R. Sp. 107.

10. A *sebait* is in the position of trustee for the founder, and cannot create permanent incumbrances to the injury of the endowed property. No prescription derived from the trustee can in such cases run against the heirs and representatives of the founder.—W. R. Sp. 157.

11. Where one of three trustees of an —, each entitled to a third share of the profits, withdraws from a contest between them, his share can only be said to be relinquished in favor of the remaining partners, and to be merged in the general account.—W. R. Sp. 171.

12. In dealing with the *mutwalee* of an —, a purchaser need look no farther than the *mutwalee's* power under the deed of trust, whether exercised judiciously or not.—W. R. Sp. 241.

13. In a Mahomedan religious —, where the manager should have certain qualifications which descent cannot secure, hereditary succession would be out of place.—W. R. Sp. 327.

14. According to Mahomedan law, *wuqf* or endowed property is not alienable; nor is it the less *wuqf* property because of the use of the words "Enam" and "Altumgha" in the grant, provided the grant clearly appears to have been intended for charitable purposes.—(P. C.) 6 W. R., P. C., 3 (P. C. R. 100.) *See* 20 W. R. 85, 25 W. R. 557.

15. A *mutwalee* or superintendent of a Mahomedan — is not barred by limitation if he sues to recover possession of endowed property within 12 years from the date of his appointment.—*Ib.*

But the ordinary rules of limitation are applicable (since the passing of Act XX of 1863) to a *mutwalee* not appointed by Government.—17 W. R. 430. *See* 25 W. R. 542.

16. The succession to an — for ascetics cannot be altered by the act of an ascetic, a mere life-tenant.—1 W. R. 160.

17. Position of an auction-purchaser of rights and interests sold in execution, in respect to endowments said to be charges on the estate.—1 W. R. 357.

18. Unless endowed property descends to a deceased *khadim's* heirs, they have no right to interfere with or manage it; and a *khadim* having only a life-interest in such property cannot give a *mourosee* lease or a lease extending beyond his lifetime.—2 W. R. 189, 5 W. R. 158.

19. A *muttwalee* in possession is entitled to make arrangements for endowed lands and to obtain kubooleuts from the ryots.—2 W. R. (Act X) 70.

20. A nominal — once made is not to be regarded as an — for ever and safe from liability of the founder or his heirs. Test of an —being *bonâ fide* or nominal.—3 W. R. 142. *See* 25 W. R. 557.

21. The manager of a religious — cannot sue for resumption of invalid lakheraj land.—3 W. R. 143.

22. The right of worship of an idol, being the joint property of the family of the endower, cannot be transferred to a third party so as to inure beyond the life of the assignor.—3 W. R. 152.

23. Clear proof is necessary to support a gift (declared orally by a person at the point of death) of all the donor's property to idols.—3 W. R. 165, 5 W. R. 82.

24. The profits of a *debuttur* mehal may be assigned so long as the *Deb-seba* is duly kept up.—3 W. R. (Act X) 152.

25. The right of one of several co-sharers in an — to recover possession of the land from which he has been ousted by the other co-sharers, is a personal and not a hereditary right. A decree for that purpose, obtained by him, if not executed by him in his lifetime, will become infructuose after his death. His widow, however, can recover in a regular suit whatever sums he paid out of his own funds for the service of the idols.—3 W. R., Mis., 25.

26. Where a plaintiff and defendant are jointly entitled

ENDOWMENT (*continued*).

to the profits from an idol, and plaintiff has been obstructed by defendant in the use and worship of the idol, plaintiff may claim a separation of rights and a removal of the idol to his own house in rotation.—4 W. R. 79.

27. Where a decree expressly declares that whatever right A has in a *debuttur* property is to be sold in execution, the decree-holder is entitled to insist on that right being sold, though A holds the property only as *sebait.*—5 W. R. 176.

28. A decree for lands with mesne profits (the lands having been held and claimed by defendant as *sebait* and the profits having wrongly gone into the treasury of the *sebait*) is not a decree against defendant personally but against him as *sebait.*—5 W. R. 202.

29. An appointment as manager, by the trustee for the time being, of a Mahomedan religious —, is not effectual beyond the incumbency of the nominator.—6 W. R. 277.

30. It has not been shown to be a principle of Hindoo law that the priest who performs the *shrad*, however temporary his incumbency, is entitled to the land endowed in consideration of the continuous performance of *shrad* and other rites.—6 W. R. 305.

31. A judgment-debtor's right as *sebait* to perform the service of an idol cannot be sold in execution of a decree, nor can his right to the surplus profits of the *seba* be sold so long as that right is unascertained and uncertain.—7 W. R. 266. *See also* 14 W. R. 409, 15 W. R. 339, 21 W. R. 365.

32. The High Priest of a religious — in Assam, who was only a nominee of the grantees, was held to have no right to grant a lease in his own name and of his own authority. —7 W. R. 446.

33. Documentary evidence is not absolutely necessary to prove an —.—8 W. R. 42.

34. Under the Hindoo law, places of worship and sacrifice are not divisible. The parties can enjoy their turn of worship, unless they can agree to a joint worship; and any infringement of the right to a turn in the worship can be redressed by a suit.—8 W. R. 193.

35. Where a public — has been transferred to trustees under Act XX of 1863, any person interested in the — has a right of suit against the trustees for misfeasance, etc.—8 W. R. 313.

36. Grants to an individual in his own right, for the purpose of furnishing means of subsistence, are not a *wuqf* or —.—*Ib.*

37. Possession and user as a *sebait* may, if unrebutted by other evidence, be sufficient as *primâ facie* evidence of title. —10 W. R. 89.

38. A heritable estate burdened with a trust (the keeping up of a saint's tomb) may be alienated subject to the trust. 10 W. R. 299. *See* 46 *post.*

39. Relative to the removal of a *mutwalee.*—10 W. R. 458.

39*a*. The purchase of property in the name of an idol where the purchase-money does not come from funds appropriated to the use of the idol, is not tantamount to the dedication of the property to the idol; it may be a *benamee* or merely fictitious transaction.—11 W. R. 13, (affirmed by P. C.) 20 W. R. 95.

40. The obtaining an order of a Civil Court decreeing to defendant a quantity of land belonging to a Mahomedan — notwithstanding the superintendent's objection that defendant was no longer *Tukkeyadar*, was held to be a sufficient cause of action by the superintendent to eject defendant from the office of *Tukkeadar.*—11 W. R. 383.

41. A party holding land assigned for the support of an idol and refusing to perform the required religious services, may be compelled to do so or removed; but a claimant under a fresh assignment from a descendant of the original grantor cannot recover possession by a suit.—11 W. R. 443. *See* 63, 72 *post.*

42. If *mutwalees* fail to act up to the directions of an —, the grant does not necessarily revert to the heirs of the original grantee.—12 W. R. 132.

43. The existence of a mortgage at the time at which an — is made does not render the — invalid under the Mahomedan law.—12 W. R. 344, 498.

44. A *mutwalee* of a Mahomedan — is entitled under ss. 14 and 15 Act XX of 1863 to bring a suit to enforce performance of the trust.—12 W. R. 382.

45. Where land is dedicated to the religious services of an idol the rents of the land constitute in legal contemplation the property of the idol, and the *sebait* has not the legal property but only the title of manager of a religious —, and cannot alienate the property, though he might create proper derivative tenures and estates comformable to usage, but not a *mourosee* tenure or a tenure at a fixed invariable rent.—(P. C.) 13 W. R., P. C., 18. *See also* (P. C.) 23 W. R 253. *See* 20 W. R. 85, 21 W. R. 41.

46. A property wholly dedicated to religious purposes cannot be sold; but where a portion only of its profits is charged for such purposes, the property may be sold subject to the charge with which it is burdened.—13 W. R. 200. *See* 20 W. R. 267.

47. The mere charge of certain items, which must in time cease, on an estate endowed under Mahomedan law, does not render the — invalid.—13 W. R. 235.

48. Where the *mutwalee* of an — dies without nominating a successor, the management must revert to the heirs of the person who endowed the property.—13 W. R. 396.

As to the power of a *mutwalee* to appoint a successor during his lifetime.—25 W. R. 542.

49. A mortgage of *debuttur* property by a *sebait* is *ultra vires.*—14 W. R. 101.

50. In a suit to recover on a bond given by the *de facto* manager of a *muth* as a charge on the *muth*, it was held that as the obligor had turned the previous manager out of possession, and as his own right to possession was contested at the time he executed the bond, he was in no better position than a trespasser and wrong-doer; and that as the bond was given for antecedent claims against the *muth*, of which a portion at least would, but for the fresh right of suit given by the bond, have been barred by limitation, and as no proceedings had been taken for sequestration or attachment of the property, there was no necessity for giving the bond, and the suit could not succeed.—14 W. R. 147.

51. Where *wuqf* property devolves to a widow as *mutwalee*, it cannot be sold in execution of a decree against her deceased husband, nor is she bound by a decision adverse to a claim set up by her husband's grandfather in respect to the property concerned if she was not a party to the litigation.—15 W. R. 75.

52. In the case of *wuqf* land, the mere stoppage of religious services does not start limitation.—16 W. R. 116.

53. The chief elements of *wuqf* are special words declaratory of the appropriation and a proper motive cause: the *wuqf* is completed where the declaration is made in a solemnly published document.—*Ib.*

54. A valid *wuqf* cannot be affected by revocation or by the bad conduct of those responsible for carrying out the appropriator's behests, nor can it be alienated.—*Ib.*

55. A *Sheeya* is not disqualified for the supervision of a *wuqf* made by a *Soonnee.*—*Ib.*

56.—The appropriation of property to the religious services of a family has never, in modern times at least, been held to require the assent of the State; and where such a trust appears to be established as to the lands dedicated, it lies on the opposite party to show some legal conversion of the lands to the ordinary uses of property.—(P. C.) 17 W. R. 41.

57. Where a party has purchased joint family property under circumstances which prove that he must have had notice of its having been dedicated to religious purposes, and does not show that he made any enquiries as to his grounds for supposing that the trust was legally at an end, he cannot exonerate the property from the trust attached to it.—(P. C.) *Ib.*

58. The *mutwalee* of a Mahomedan — though guilty of gross neglect in the supervision of his cash balances, is entitled to recover from the treasurer's sureties sums misappropriated by the treasurer, in the absence of fraud or connivance at the delinquency of the treasurer.—17 W. R. 131.

59. A person who succeeds his father as *sebait* is not bound by any acts of his father done in fraud of the trust. —17 W. R. 444.

60. An application under s. 5 Act XX of 1863 to be appointed manager of a religious — was held rightly rejected on the ground that there had been no transfer of the property by the Local Government under s. 4.—18 W. R. 396.

ENDOWMENT (*continued*).

61. The mere fact that a portion of the profits of land in the possession of a party had been for some time used for the worship of an idol, is no proof of an —, and cannot impose on such party the liabilities attaching to the office of a *sebait*.—18 W. R. 399.

62. A *sebait* may lease endowed lands for a period not extending beyond his lifetime or his incumbency.—18 W. R. 439.

63. Where land has been given as *debuttur* land and the requisite service is not performed, all that the zemindar can do is to take steps to have the service performed; he cannot recover it in a suit for *khas* possession.—18 W. R. 472. *See* 41 *ante* and 72 *post*.

64. The general principle regulating the devolution of property belonging to a *muth*, on the death of a *mohunt*, is that a virtuous pupil takes the property. In some instances the mohuntship descends to a personal heir, and in others to a successor appointed by the existing *mohunt*; but the ordinary rule is that *muths* of the same sect in a district, or having a common origin, are associated together, and on the occasion of the death of one *mohunt*, the others assemble to elect a successor either out of the disciples of the deceased or from those of another *mohunt*.—19 W. R. 215.

65. Relative to the nature of the relations subsisting between the *muth* of Tirpuntal, Zillah Tanjore, in the Madras Presidency, and the *muth* at Benares.—(P. C.) 20 W. R. 217.

66. A *mohunt* in charge of an —, with only a life interest in the property, cannot create an interest superior to his own, or, except under the most extraordinary pressure and for the distinct benefit of the —, bind his successors in office. If a purchaser from such *mohunt* retained possession after the *mohunt's* death, the successor to the *guddee* would have a cause of action against him from the date of the election, and no length of possession during the vendor's lifetime would give the purchaser a valid title as against the present *mohunt*.—20 W. R. 471.

67. The Civil Courts have no power to bind in perpetuity all the successive owners of an — as to the mode in which their property should be managed; and the *sebaits* of a *debuttur* — may make such arrangement for its management as is consistent with their duties, but they cannot make it binding for ever upon all their successors.—21 W. R. 41.

68. In a suit to set aside the sale of property belonging to a religious —, the Lower Court gave plaintiff a decree in favor of his reversionary rights declaring that the conveyance should not operate adversely to him except to the extent of such portion as was sold to meet pressing debts and necessities of the *muth*.—*Held* that such a decree was erroneous, as the transaction of sale was one and indivisible; and that plaintiff had no right to sue the purchaser of the property, as the conveyance on which he sued did not pass to him any right, present or reversionary, in the property.—21 W. R. 334.

69. According to s. 18 Act XX of 1863, no order for costs can be made out of the estate where a party to the suit is in fault.—22 W. R. 21.

70. Plaintiffs, the wives of R who had been appointed *sebait* under his father's will, were held to have no right as *sebaits* against R, and could not maintain a suit for declaration of the rights of the idols in certain property and for possession by setting aside an execution sale; and as they had omitted to make R a defendant, the Court could not make him a party under s. 73 Act VIII without a material variation of the plaint.—22 W. R. 97.

71. A suit for the removal of the present *mohunt* of a religious — and for the appointment of another in his place, is not of such a nature as is contemplated by Act XX of 1863.—22 W. R. 364.

72. Where the objects of an — are not carried out, it does not follow that the property can be resumed by the heir of the original donor as if there was a forfeiture; but some person authorised by law must take steps for securing its profits to the object of the —.—23 W. R. 76. *See* 41, 63 *ante*.

73. The jurisdiction given to Courts by Act XX of 1863 cannot be excluded by any clause in a deed of —.—23 W. R. 150.

74. Where a *mutwalee* was proved guilty of waste, the High Court ordered him to file in Court every six months a true and complete account of his income, expenditure, and dealings with the property belonging to the —.—*Ib.*

75. A memorandum of agreement, by which certain Government securities had been appropriated to the service of an idol, was refused to be set aside as a colorable transaction having no validity, merely upon the suggestion that the amount set apart was exorbitant and that there might possibly have been an intention to defraud widows and others.—(P. C.) 23 W. R. 369.

76. Where a Mahomedan widow of the *Shooya* sect executed a *towleutnamah* with a view to perpetuate certain ceremonies in commemoration of her mother's death, involving the recital of prayers in her own Imambara, and the expenses of the first 10 days of the Mohurrum,—*Held* that the — was not of a public character coming under the provisions of Act XX of 1863.—23 W. R. 453.

77. Where a *purdanusheen* lady makes an appropriation of property, which, so far as words go, is a *wuqf*, it still remains to consider whether it was intended by the appropriator to operate as such; such ladies having a claim to special consideration, particularly where they deny on oath an effectual knowledge of documents which they are said to have made.—23 W. R. 453.

78. Though one person may be the representative of two idols, money brought into Court as the property of one idol cannot be applied by the representative of that idol to pay the debts of the representative of the other idol.—25 W. R. 401.

See Appeal 56.
Certificate 38, 68, 106, 111.
Enhancement 167.
Evidence (Admissions and Statements) 32.
Hindoo Law (Alienation) 1, 8.
" " (Religious Ceremonies).
" Widow 34, 119.
Kubooleut 38.
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Mesne Profits 94.
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Occupancy 75.
Onus Probandi 201.
Pension 1.
Putnee Talook 41.
Registration 126.
Religious Ceremonies.
Trust 15.

Enhancement.

1. In a suit to contest notice of —, Judge not bound to order local enquiry. No special appeal will lie from exercise of discretion by Judge in such a matter.—W. R., F. B., 19 (1 Hay 229, Marshall 60).

4. A mokurruree tenant is not exempt from — as against an auction-purchaser before Act XI of 1859 unless his mokurruree was created 12 years before the Permanent Settlement.—W. R., F. B., 31 (1 Hay 242, Marshall 107), 6 W. R. 46. (*Over-ruled by F. B.*) *See* 202 *post*.

5. When and to what extent allowable. Principle of proportion disallowed. Definition of rent.—W. R., F. B., 48 (1 Hay 350, Marshall 151, Sev. 136*oo*).

6. Where a tenant (appellant) seeks to reduce the amount of enhanced rent decreed, the respondent may under s. 348 Act VIII of 1859 show that the — ought to have been more than that decreed.—*Ib.*

7. Mode of determining fair and equitable rates.—W. R., F. B., 59 (1 Hay 451, Marshall 186). *See also* Sev. 136*a*, 9 W. R. 392, 23 W. R. 426.

8. Question for decision in suit to contest notice of —.—W. R., F. B., 59 (1 Hay 452, Marshall 185).

9. Presumption of fixed holding under Reg. VIII of 1793.—W. R., F. B., 94.

ENHANCEMENT (*continued*).

10. In a suit for enhanced rent where liability to — is disputed, a declaratory decree for — may be given without proof of notice.—(F. B.) W. R., F. B., 115 (2 Hay 652, Marshall 523). *See also* 7 W. R. 235, (P. C.) 19 W. R. 175, 22 W. R. 482, 23 W. R. 442. *But see* 139 *post.*

11. In a suit for — where lakheraj is pleaded, payment of rent must be proved.—(F. B.) *Ib.* *See also* 7 W. R. 44.

13. Valuation of produce. Wages of ryot. Allowance for house. Risk on cultivation. Interest and insurance. Rate of rent. Ryots with right of occupancy.—W. R., F. B., 131.

15. Condition and rights of ryots.—W. R., F. B., 148 (2 R. J. P. J. 179, Sev. 136*ee*).

16. Mere payment of rent at a uniform rate from 1208 does not afford the necessary proof that the tenure is a *mokurruree* and, as such, protected from —.—1 Hay 51.

17. An old decision of a Register's Court between the ancestors of the present parties, by which the defendant's ancestor recovered possession of the tenure described in it as a talook under s. 5 Reg. VIII of 1793, was held insufficient to prove the payment of uniform rent for more than 12 years prior to the Decennial Settlement. The plaintiff was held not entitled to any rent at the enhanced rate until his demand was effectively made in Court; but as he had not succeeded in making good his claim to the rates demanded, he could only recover the rate of rent fixed by the Court from the date of the decree.—1 Hay 439.

18. In declaring a tenure liable to —, the Court should decide the question of rate at once and not leave it to be determined in execution of decree.—2 Hay 89.

19. Notice must be served on each defendant before enhanced rates can be decreed.—2 Hay 120.

20. A farmer for a term of years is entitled to enhance the rent of ryots holding under him, when there is no condition or stipulation in his lease precluding him from so doing.—2 Hay 394 (Marshall 331).

21. A notice of — under s. 13 Act X of 1859, signed by the Naib of the landlord, is valid without evidence that he was specially authorized to sign the notice.—2 Hay 102 (Marshall 354).

22. A pottah, not transferable, may be pleaded, even by an assignee of it, in bar to a suit for —.—2 Hay 414.

23. In a suit for — under cl. 1 s. 17 Act X of 1859, on the ground that the rates are below the prevailing rates payable in the neighbourhood, the question whether and to what extent the rents ought to be enhanced, is to be determined by a comparison of the rents actually paid by similar adjoining lands, and without reference to the value of the produce.—2 Hay 427 (Marshall 379). *See also* 5 W. R. (Act X) 70, 6 W. R. (Act X) 15, 7 W. R. 118, 11 W. R. 388.

And so under cl. 1 s. 18 Act VIII of 1869 (B. C.), the words "places adjacent" not necessarily implying contact. —21 W. R. 157.

Under the same clause a Court cannot strike an average on the rates of rent proved before it, but must decide what is a fair and equitable rate of rent for defendant to pay.— 22 W. R. 185.

24. In a suit for — upon the above ground, the Judge exempted from any — a tank and garden, on the ground that the tank had been dug for public use, and that the garden had been rendered productive by the exertions of the tenants. *Held* that neither reason was any ground of exemption from —.—*Ib.*

25. The necessity of serving notice of — does not cease by reason of the tenant holding a moiety of the estate of another person under an arrangement to pay a higher rent for the moiety.—2 Hay 443.

26. The mere circumstance that the landlord has assigned to a creditor a certain amount of the rents for certain years extending beyond an existing lease, does not prevent him from enhancing the rent after the expiration of the term.— 2 Hay 508 (Marshall 435).

27. The — of the rent of an undivided fractional part of a tenure involves — of the rent of the whole tenure and destroys the presumption raised under ss. 4 and 16 Act X of 1859.—2 Hay 514.

28. A dried up jheel is liable to — if rendered capable of cultivation by a change in the course of the river.— 2 Hay 515.

29. A suit for — is not maintainable against the descendant of the grantee of a hereditary conditional jagheer. The zemindar must first sue to resume, on the ground that the jagheer has been determined by breach of the condition through neglect of the service.—Marshall 518.

30. A joint notice of — was served upon several ryots whose jummas were in fact separate, but which, for a great many years, in suits and other proceedings, had been eventually treated as joint. *Held* that the ryots ought not to be allowed, in a suit for an excessive demand of rent, to object that they were entitled to separate notices, but that they were entitled to the benefit of some of the holdings being separate for the purpose of surrendering some and retaining others of such separate holdings, under s. 19 Act X of 1859.—2 Hay 599 (Marshall 498).

31. An increase in the productive power of the land, occasioned by an embankment, constructed at the expense of Government, for excluding the sea from flooding the land, is a ground of — under s. 17.—*Ib.*

34. In a suit to recover khas possession of land of which the plaintiff alleged he had been fraudulently dispossessed by the defendant, the defendant claimed to be entitled to the possession of the land under a deed of gift at a fixed rent. The Judge found upon the facts that the deed of gift was invalid, that the land was *mâl*, and that the defendant was entitled to retain the possession, and thereupon dismissed the suit. *Held* that the plaintiff was not precluded by the decision in this suit from afterwards maintaining a suit against the defendant to enhance the rent.—Marshall 600.

35. In a suit for — the Collector dismissed the suit. On appeal the Judge held that rent was liable to —, and remanded the case to the Collector to find what rate was equitable. *Held* that a special appeal lay from the decision of the Judge, notwithstanding the remand to find the rate.—*Ib.*

36. A landlord is not estopped from enhancing rent by the circumstance that he has caused the tenure to be sold under a decree.—Marshall 605, 6 W. R. (Act X) 95.

37. In a suit for — the Deputy Collector found that the annual revenue obtained by the ryots was 12,579Rs., and that an increase in such rates was partly due to the exertions of the defendant in reclaiming some waste land, and he deducted 2.579Rs. as the defendant's share, and awarded 10,000 Rs. as a fair and reasonable rate to be paid to the plaintiff. *Held* that there was no reason for impeaching his award of this rate.—*Ib.*

38. The purchaser of a transferable tenure under which the rent cannot be enhanced is entitled to the benefit of it, although he may not have occupied for 12 years or acquired a right of occupancy under s. 6 Act X of 1859. Marshall 625.

39. In a suit for enhanced rent, the guide is not the rates of the particular village in which the land is situate, but the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent. -1 R. J. P. J. 48 (Sev. 23). *See also* Sev. 136; 9 W. R. 319; 11 W. R. 142, 515; 12 W. R. 475; 13 W. R. 297.

40. A notice under s. 13 Act X of 1859 must state the rent payable by the tenant in the ensuing year and the grounds of —, but need not record the exact area. The Court will award an amount proportionate to the area actually found in the occupation of the ryot.—1. R. J. P. J. 51 (Sev. 22*a*). *See also* 12 W. R. 475.

41. An auction-purchaser at a sale for arrears of revenue prior to Act X of 1859 cannot enhance the rent of land which has been held at a fixed rent from the time of the Permanent Settlement, although the pottah by which the rent was fixed was not *istemraree* or *mokurruree*.— 1 R. J. P. J. 54 (Sev. 36).

42. An ousut talook, the rent of which has not been changed from 1198 B. S. is not liable to — under s. 15 Act X; nor, if the talook were granted within defined boundaries, is any excess land not beyond those boundaries liable to — under s. 17, which does not apply to a talookdar possessing permanent rights.—1 R. J. P. J. 100 (Sev. 66). *See also* 10 W. R. 455.

43. In a suit for —, on proof of payment of uniform rate of rent for more than 20 years, the Court is bound to presume that the rent has been unchanged since the Permanent Settlement.—1 R. J. P. J. 106, 6 W. R. (Act X) 51.

44. Plaintiff having sued for enhanced rent of land consisting of two parcels, one found not liable and the other

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liable to —, he need not have been referred to a separate suit for — in respect of the latter parcel because he had made no distinction between the two jummas.—1 R. J. P. J. 119 (Sev. 215).

45. Service of notice of —, if not within time, is not sufficient.—1 R. J. P. J. 152 (Sev. 308).

46. Unless a defendant specially pleads that he has held from the time of the Decennial Settlement at an unchanged rate, the proof of unvaried rents for 20 years raises no presumption of law in favor of an absolute exemption from—.—1 R. J. P. J. 166 (Sev. 706). *See contra* 2 W. R. Act X) 74; 3 W. R. (Act X) 162, 170; 4 W. R. (Act X) 25, 43; 5 W. R. (Act X) 53, 86; 6 W. R. (Act X) 37; 7 W. R. 242, 472; 8 W. R. 5; 11 W. R. 84.

47. Act X of 1859 exempts from — tenants who have held at a fixed rent from the time of the Perpetual Settlement whether under *istemraree* or *mokurruree* pottahs or not. Even under the Sale Law, a suit for — cannot be maintained if the defendants prove that their talook has fixed and paid rent at a uniform rate more than 12 years before the Perpetual Settlement.—1 R. J. P. J. 216 (Sev. 756).

48. No — of rent is valid if based on a notice which discloses no ground of — and which is therefore irregular and opposed to s. 13 Act X of 1859.—2 R. J. P. J. 15, 8 W. R. 271.

49. Bastoo lands are not exempt from —.—W. R. Sp. (Act X) 9 (2 R. J. P. J. 72). *See also* 12 W. R. 140.

50. In a suit for —, the decree cannot be set aside on the ground that its appropriate rent was not apportioned to every portion of the land which varied in quantity.—W. R. Sp. 61 (2 R. J. P. J. 76).

51. Can only take place on the grounds stated in the notice.—W. R. Sp. (Act X) 14 (2 R. J. P. J. 88).

52. In a suit for — where the ryot relied on a pottah proved to be spurious, it was held that he could not fall back on his right to hold at a fair rate.—W. R. Sp. (Act X) 38 (2 R. J. P. J. 199). (*Over-ruled by F. B.*) *See* 6 W. R. (Act X) 70.

53. One of several joint proprietors of an estate can maintain a suit for — of his share of the rent without a butwarra —W. R. Sp. (Act X) 41 (2 R. J. P. J. 202). *See* 22 W. R. 385.

54. In a suit under the old law for — of the rent of a talook,—*Held* that, although the defendant set up a defence under s. 49 Reg. VIII of 1793, the Court should have framed a further issue, whether, failing that issue, he was entitled to the benefit of s. 51.—Sev. 175.—*See* 13 W. R., P. C., 11.

55. In the absence of express stipulation or such a right as is mentioned in ss. 3 and 4 Act X of 1859, all ryots having rights of occupancy are liable to have their rents enhanced, if such rents are below the rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.—Sev. 317.

But not simply on the ground that the landlord has settled with Government at a higher rate of revenue.—22 W. R. 10.

56. To establish a holding of 20 years at an invariable rate whether under s. 4 or under ss. 15 and 16, it is not necessary to prove the rent paid for each year.—3 R. J. P. J. 135; 1 W. R. 280; 2 W. R. (Act X) 60 (4 R. J. P. J. 154); 3 W. R. (Act X) 148; 7 W. R. 417; 8 W. R. 284. *But see* 6 W. R. (Act X) 41, 9 W. R. 270.

So also under s. 4 Act VIII of 1869 (B. C.).—22 W. R. 487.

57. Cl. 2 s. 17 contemplates cases where the productive powers of the land have been increased by the employment of large means and particular appliances, *e.g.* by marked improvements in communication by roads or railways, by extensive or well-planned schemes of draining, and the like; but not where a ryot plants a few bamboos, or fences the trees grown on the land adjoining his homestead, and calls the place a garden.—3 R. J. P. J. 140.

Nor where prices have accidentally risen in consequence of drought and scarcity.—6 W. R. (Act X) 31.

Or in consequence of a great portion of the town having been swept away by a river.—8 W. R. 330, 10 W. R. 225.

58. A landlord suing to enhance is not bound to prove the former rate but has a right to enhance at the pergunnah rate unless the defendant can bar him.—3 R. J. P. J. 141.

59. A tenure which existed upon its present jumma in 1783, and has since paid the same amount of rent without challenge, may be presumed to have existed previously so as to be protected from —.—W. R. Sp. 204.

60. A decree declaratory of plaintiff's general right to enhance on future service of notice may be passed in a suit under Reg. V of 1812 for — at a specified rate, in which service of notice was not proved.—W. R. Sp. 312.

61. In a suit for —, if defendant relies on a pottah given long after the Permanent Settlement, his own defence rebuts any presumption which might arise under s. 4 Act X of 1859 from a 20 years' uniform payment of rent.—W. R. Sp. (Act X) 36, 124. *See also* 6 W. R. (Act X) 50, 8 W. R. 129, 9 W. R. 149, 15 W. R. 193, 22 W. R. 220.

62. A notice of — served under s. 13 Act X of 1859, is not informal because it does not bear the signature of the landlord or his agents.—W. R. Sp. (Act X) 56 (2 R. J. P. J. 219).

63. An indigo factory is a "conspicuous place," within the meaning of the same section, where a notice of — may be affixed.—*Ib.*

64. Before Act X of 1859, there was no law which prevented a zemindar from enhancing his rent unless the ryot had held at fixed rates for 12 years before the Decennial Settlement.—W. R. Sp. (Act X) 58 (2 R. J. P. J. 266).

65. Moostagirs are protected from —, not as ryots, but as intermediate tenants, under ss. 15 and 16 Act X of 1859.—W. R. Sp. (Act X) 61 (2 R. J. P. J. 267). *See* 9 W. R., P. C., 3.

66. Jungleboorec tenants are liable to —.—*Ib. See also* 11 W. R. 31.

67. A middleman is liable to —. Two-thirds was held to be a fair proportion of the surplus profits of the land to be awarded to the landlord.—W. R. Sp. (Act X) 74 (2 R. J. P. J. 313). *See also* 6 W. R. (Act X) 41, 8 W. R. 181, 12 W. R. 449, 18 W. R. 528.

68. S. 17 Act X of 1859 does not say that the rent must always be raised to the prevailing rate, but that it should not be raised except on one of the grounds specified. That section must always be read with reference to the general provision of s. 5 that the rent of a ryot with a right of occupancy shall not be more than is fair and equitable.—W. R. Sp. (Act X) 75 (2 R. J. P. J. 316).

69. Proof of uniform payment of rent for 20 years by ryots pleading possession from the Decennial Settlement entitles to the presumption under s. 4 Act X of 1859 and saves from —; but proof of uniform payment by ryots pleading possession for 50 or 60 years, entitles only to a right of occupancy.—W. R. Sp. (Act X) 86 (2 R. J. P. J. 372). *See also* 4 W. R. (Act X) 15. *But see* 12 W. R. 243.

70. The service of a defective notice of — (*i.e.* one not containing the reasons assigned in s. 13 or 17 Act X of 1859) is tantamount to non-service.—W. R. Sp. (Act X) 89 (3 R. J. P. J. 16). *See also* 12 W. R. 506, 15 W. R. 335.

71. S. 13 does not apply to farmers holding without or after expiry of their lease.—W. R. Sp. (Act X) 92 (3 R. J. P. J. 20).

72. The fact that a Mokurrureedar has for any reason agreed to pay an enhanced rent to one share-holder, does not entitle another share-holder to demand enhanced rent, except according to s. 13.—W. R. Sp. (Act X) 94.

73. S. 4 does not require a defendant to prove uniformity of payment from the Permanent Settlement, but provides that such uniform payment shall be presumed if it appear that the rent has not been changed for 20 years.—W. R. Sp. (Act X) 100 (3 R. J. P. J. 38); 3 W. R. (Act X) 133; 8 W. R. 487; 9 W. R. 147, 158; 10 W. R. 364. *But see* 13 W. R. 216.

74. To obtain the benefit of cl. 4 s. 26 Act I. of 1845 protecting garden-lands from —, there must be a clear finding that the lands have been held as such under *bonâ fide* leases.—W. R. Sp. (Act X) 101.

75. A zemindar, on ousting his intermediate holder, cannot enhance the rents payable by such holder's tenants, without proceeding in the regular way.—W. R. Sp. (Act X) 102.

76. A Judge is wrong in refusing to decree rent at enhanced rates merely because the judgment which fixed the enhanced rent has been appealed against on a point of law.—W. R. Sp. (Act X.) 106 (3 R. J. P. J. 83).

77. In a suit for —, where the ryot dates his holding from a certain date and cannot carry it back by presumption to the time of the Permanent Settlement, he is not entitled to the benefit of the presumption under s. 4 Act X of 1859.—W. R. Sp. (Act X) 109.

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78. The holder of a specific share in an estate not regularly partitioned, may sue for — of his share of the rent.—W. R. Sp. (Act X) 111 (3 R. J. P. J. 97). *See* 22 W. R. 385.

79. A slight irregularity in the drawing up of a notice of —, cannot affect the plaintiff's right to a declaratory order asserting his right to enhance at some future time on service of a fresh notice.—*Ib.*

80. Where a zemindar has received rent for 22 years from the tenant in possession, notwithstanding that he is not registered in his sherista, it is upon such *recognized tenant*, and not any other party, that his notice of — must be served.—W. R. Sp. (Act X) 112 (3 R. J. P. J. 97).

81. In fixing the rent to be paid for cultivated land originally held on a jungleboorce grant, the Court should ascertain the rate payable by the same class of ryots for lands of a similar description and with similar advantages.—W. R. Sp. (Act X) 113 (3 R. J. P. J. 103).

82. Where the purchaser of a moiety of an estate settled in perpetuity according to a jummabundee, sues, many years after the settlement, to enhance the rents entered therein, he must show that circumstances have occurred since the settlement which have tended to raise the value of the ryot's lands.—W. R. Sp. (Act X) 118 (3 R. J. P. J. 107).

83. A notice of — must be reasonably accurate and precise. A notice to pay a lump sum on the whole land in and out of defendant's possession is not sufficient.—W. R. Sp. (Act X) 118 (3 R. J. P. J. 108). *See also* 8 W. R. 330, 12 W. R. 226, 21 W. R. 33, 22 W. R. 485.

84. The consolidation of several holdings, or the omission of fractions by the Settlement Officer, cannot deprive a ryot of the benefit of the presumption arising under s. 4 Act X of 1859.—W. R. Sp. (Act X) 126 (3 R. J. P. J. 118). 5 W. R. (Act X) 53, 10 W. R. 117. *See* 21 W. R. 267.

85. A proprietor who has settled with Government under a jummabundee cannot sue for — on the mere ground that the rate is below the prevailing rate.—*Ib.*

86. Where a pottah contains no term and does not provide against —, and the tenant has not occupied for 12 years, he will be entitled to proportionate reduction if he has improved the land; but if the value of the land in the neighbourhood has increased, the landlord will be entitled to — proportioned to that improvement.—W. R. Sp. (Act X) 128 (3 R. J. P. J. 120).

87. The objection that the documents relied on by the defendants in support of their mokurruree title contain no expressions importing the hereditary character of the alleged tenures, was held to be one not open to the plaintiff in a suit for —.—(P. C.) 3 W. R., P. C., 1 (P. C. R. 558); 11 W. R., P. C., 10.

88. A plaintiff who sues for enhanced rent is bound to prove that the present rate is not fair and equitable.—1 W. R. 3 (3 R. J. P. J. 125).

89. A plaintiff cannot be prejudiced by reason of his plaint demanding less rent than that specified in his notice of —, when such notice has not been disputed until after action brought. On the other hand, a plaintiff cannot recover higher rent than that demanded in the notice of —.—1 W. R. 3 (3 R. J. P. J. 124). *See also* 24 W. R. 13.

90. The default of one share-holder renders a tenure liable to —.—1 W. R. 10 (3 R. J. P. J. 131).

91. A dependent talookdar sued for —, is entitled to a finding not only on the question whether, by proving a holding for 12 years before the Permanent Settlement, he can put the plaintiff out of Court, but also on the question whether, by holding from the Permanent Settlement, he cannot claim the protection given by s. 51 Reg. VIII of 1793.—1 W. R. 37. *See also* Sev. 175, 24 W. R. 146.

92. In a suit for —, there must be legal evidence of 20 years' uniform rent before defendant can obtain the benefit of the presumption under s. 4 Act X of 1859.—1 W. R. 45 (3 R. J. P. J. 161). *See also* 3 W. R. (Act X) 148; 5 W. R. (Act X) 84, 89; 6 W. R. (Act X) 23, 89, 91; 7 W. R. 407, 10 W. R. 256; 17 W. R. 374; 21 W. R. 403.

93. In a suit for arrears of rent at enhanced rates, the *onus probandi* is on plaintiff both as to quantity and rates.—1 W. R. 56, 58. *See also* 9 W. R. 65. *See* 21 W. R. 157.

94. Interest and damages not claimable where enhanced rent is required to be fixed by a Court of Justice.—*Ib.*

95. Non-payment of the preceding year's rent cannot prevent —.—1 W. R. 72.

96. Pendency of — suit is no excuse for non-payment of old rate of rent.—1 W. R. 100 (3 R. J. P. J. 188).

97. Where first Court's decision as to rates in a suit for — is contested in appeal, the Appellate Court is bound to have a distinct finding as to the proper rates, even though defendant pleaded a mokurruree pottah which is found to be a forgery.—1 W. R. 106. (*Affirmed by F. B.*) *See* 6 W. R. (Act X) 70.

98. In a suit for — the Court is not bound to depute an Ameen to measure lands for a plaintiff who has produced no proof of the quantity of land held by the defendant.—1 W. R. 112 (3 R. J. P. J. 190). *See also* 6 W. R. (Act X) 11, 18.

99. Nor is the Court bound to calculate the exact value of the crops and of each item of expense, if from other reliable evidence it has the means of estimating the general average degree of enhanced value.—*Ib.*

100. In a suit to contest notice of —, although the *onus probandi* is on the landlord, the Court ought not to give plaintiff a decree merely upon an Ameen's report without finding how far the report supports the defendant's special grounds.—1 W. R. 155.

101. In a suit for —, though defendant's pottah may be found to be a forgery, he is entitled to a decision on his right to protection from — under s. 4 Act X of 1859 upon his establishing that he has held at a uniform rate for 20 years and upwards.—1 W. R. 159. *See also* 7 W. R. 135. *See contra* 2 R. J. P. J. 356.

102. In a suit for — where defendant pleads a mokurruree tenure and sale thereof to intervenor it is not necessary to make the alleged purchaser a formal defendant under s. 73 Act VIII of 1859 when the transfer is not proved.—1 W. R. 171.

103. A notice of — should be served on the ryot in possession.—1 W. R. 210 (3 R. J. P. J. 272), 12 W. R. 265.

104. A tenant under two zemindars, where the estates are separate though the lands comprising them are held *ijmallee*, may agree to pay enhanced rent to one of them without rendering himself liable to pay it to the other.—1 W. R. 226 (3 R. J. P. J. 279).

105. The increased rent must bear to the old rent the same proportion that the increased profits bear to the old profits.—*Ib.*

106. The variation of a few rupees between a ryot's admitted jumma and the jumma of his dowl is not such a variation as to destroy the rights of a fixed jumma or to deprive him of the benefit of the presumption of s. 4 Act X.—1 W. R. 230; 2 W. R. (Act X) 74; 4 W. R. (Act X) 33; 7 W. R. 282, 281. *But see* 7 W. R. 44.

So held under s. 4 Act VIII of 1869 (B. C.) also.—21 W. R. 420.

107. A difference of currency is not a variation of rent rebutting the presumption of s. 4 Act X of 1859.—1 W. R. 248, 356 (3 R. J. P. J. 353); 2 W. R. (Act X) 60 (4 R. J. P. J. 154); 6 W. R. (Act X) 51.

109. As *abwabs* and *mahtot* are no longer leviable where a pottah provided for a progressive jumma of an *ousut* talook including *abwabs* and *mahtot*, the zemindar was held entitled to a fair and equitable rate as prevailing in the neighbourhood.—1 W. R. 298.

110. A talook with a fluctuating rent is not protected from — under s. 51 Reg. VIII of 1793; but the holders, not being common ryots, are entitled to a deduction for expenses of collection.—1 W. R. 339. *See* 6 W. R. (Act X) 42; 13 W. R., P. C., 11.

111. A notice of — need not be sealed or signed by the Collector.—1 W. R. 345 (3 R. J. P. J. 352).

112. Protection from — under old law prior to Act X of 1859.—1 W. R. 350.

113. S. 4 Act X of 1859 makes no exception as to *khamar* lands.—1 W. R. 356 (3 R. J. P. J. 353).

114. In a suit for —, the Judge is not wrong in confining his judgment to the right of — without decreeing the plaintiff's claim at the rate admitted by the defendant.—*Ib.*

115. A dependent talookdar, whose tenure was in existence before the Permanent Settlement, is entitled to protection under s. 49 Reg. VIII of 1793, unless his zemindar can prove a title to — under s. 51.—1 W. R. 367.

116. A dur-ijaradar can enhance the rents of the estate of which he holds the sub-lease.—2 W. R. 158.

117. The stipulation in a pottah "after this in no manner shall — be demanded," precludes — during the existence

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of the pottah, notwithstanding in a preceding part of the pottah the words "year by year" are used.—2 W. R. 225.

118. Perpetual leases for building are only protected as held at a fixed rate, when the rent is fixed by the original leases.—2 W. R. 231.

119. In a suit for — *ex-parte* summary decrees are not satisfactory proof that a variation has taken place in the amount of the rent paid so as to destroy the presumption under s. 4 Act X.—2 W. R. 326, 6 W. R. (Act X) 28.

120. Only a fair and reasonable rent can be claimed, though the tenant be not a ryot entitled to the benefit of s. 17 Act X.—2 W. R. (Act X) 6 (4 R. J. P. J. 21). *See also* 10 W. R. 123, 12 W. R. 111, 13 W. R. 255.

121. A neem ousut talookdar cannot enhance a howaladar's rent where the howaladar holds under a pottah granted to him by Government with a fixed rate.—2 W. R. 7.

122. The erection of indigo factories or other buildings upon lands not leased distinctly for building purposes, in no way bars the landlord's right of —.—2 W. R. (Act X) 7 (4 R. J. P. J. 23).

123. It can be no ground for — on the part of a proprietor that his tenant-in-chief succeeds in getting a larger rent from his under-ryots, when the increased value of the land is attributable to that head tenant's exertions, and not to the assistance of the zemindar.—2 W. R. (Act X) 12.

124. A diminution in the jumma caused by the alienation of a portion of his jote, does not deprive a ryot of the benefit of the presumption of s. 4 Act X.—2 W. R. (Act X) 17.

125. A notice of — can only have retrospective effect.—2 W. R. (Act X) 30.

And should not be prospective.—12 W. R. 531.

126. A ryot is not liable to pay any higher rent than he has always paid until the landlord sues him for — or can show that the ryot has agreed to pay a higher rent.—2 W. R. (Act X) 34.

127. The — of rent of jungle lands made culturable by the ryot is not entirely barred.—2 W. R. (Act X) 40 (4 R. J. P. J. 112).

128. A perpetual pottah taken by a person in 1237, on terms which the former holders are not shown to have enjoyed, does not protect him from — on the ground that those holders held at the present rate for 12 years before the Permanent Settlement.—2 W. R. (Act X) 17.

Reversed by Privy Council on the ground that a claim to exemption from —, being founded on the tenure being a *kudeemee* ryotty tenure, did not fall within s. 51 Reg. VIII of 1793 which relates to dependent talookdars properly so-called.—(P. C.) 19 W. R. 353.

129. *Quære*.—Whether an istemraree lease bars — or not.—2 W. R. (Act X) 66.

130. In a suit for enhanced rent brought by a landlord under Act X, the benefit of the presumption under s. 4 arising from 20 years' uniform payment of rent cannot avail the ryot against a former decree of a competent Court declaring his holding liable to —.—2 W. R. (Act X) 69.

The above ruling was adopted by the Privy Council as to the presumption under ss. 15 and 16 (referring to under-tenants or talookdars).—(P. C.) 19 W. R. 175. *See also* (P. C.) 23 W. R. 352.

131. A ryot holding over after expiry of lease is liable to —.—2 W. R. (Act X) 73.

132. Additional rent for additional land, and the addition of a small illegal cess, are not such variations as deprive a tenant of the presumption of s. 4 Act X.—2 W. R. (Act X) 93 (4 R. J. P. J. 308).

133. In a suit for — brought before Act X, the ryot cannot avail himself of the presumption arising under s. 4.—3 W. R. 14. *See also* (F. B.) 7 W. R. 135.

134. Excess lands are liable to —.—3 W. R. 14. *See also* 6 W. R. (Act X) 19; 7 W. R. 122; 9 W. R. 65, 476; 22 W. R. 246. *But see* 189, 197 *post*.

135. S. 51 Reg. VIII of 1793 refers solely to dependent talookdars and does not protect from — persons whose tenures are terminable at the end of any year or at the pleasure or caprice of their zemindars.—3 W. R. 172.

136. The right of — of rent, though not enforced by the original purchaser at a sale for arrears of revenue under Reg. XI of 1822, may be revived by his successor.—3 W. R. 178.

Reversed by Privy Council on the ground that the right was a stale one depending on powers which existed only by virtue of the repealed sections of Reg. XI of 1822.—11 W. R., P. C., 10.

137. A howaladar, who is in reality a cultivating ryot, is not protected against —.—3 W. R. (Act X) 11 (4 R. J. P. J. 392).

138. Presumption of payment of rent from before Decennial Settlement not limited by s. 16 Act X to the best evidence of uniform payment for 20 years.—3 W. R. (Act X) 13, 8 W. R. 284. *But see* 3 W. R. (Act X) 135.

139. S. 13 Act X only gives a right to sue for enhanced rent on due notice, and not the right to sue for title to enhance.—3 W. R. (Act X) 25, 140. *See also* 6 W. R. (Act X) 96.

140. The grounds of — specified in s. 51 Reg. VIII of 1793, and not those in s. 17 Act X of 1859, are applicable to dependent talookdars.—3 W. R. (Act X) 26, 8 W. R. 496, 20 W. R. 459, (P. C.) 23 W. R. 352.

Even a dependent talookdar who. under s. 51 Reg. VIII, might otherwise be liable to —, was exempted by s. 15 Act X, if he held his tenure otherwise than under a terminable lease and at a fixed unvarying rate from the Permanent Settlement.—(P. C.) 23 W. R. 352.

141. A suit to enhance the rate of rent after notice is the proper mode of suing for — of rent. But the same matter may be determined in a suit for a kuboolcut.—(F. B.) 3 W. R. (Act X) 29 (4 R. J. P. J. 465).

142. In a suit to enhance the rate of rent of a ryot having a right of occupancy under s. 6 Act X, the sole ground of — being an increase in the value of the produce, the words "fair and equitable" in s. 5 mean, not the rate obtainable by open competition, but the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent. If the customary rate of the neighbourhood had not been adjusted with reference to the increased value of the produce, then the rate of rent to be paid should bear to the old rate the same proportion as the present value of the produce bears to the old value; except in special cases, when this rule may be departed from.—(F. B.) *Ib. See also* 6 W. R. (Act X) 32, 9 W. R. 347, 15 W. R. 180, 21 W. R. 157, 25 W. R. 391.

143. The fact alone of variations in the amount of rent paid between one year and another does not necessarily establish a right of —.—3 W. R. (Act X) 122.

144. The break of one year in 20 is not sufficient to set aside the presumption that the receipts for 19 years prove the payment of a uniform rent.—3 W. R. (Act X) 123. *See also* 25 W. R. 384.

145. In a suit for — upon a specified ground. that is the sole point to be tried. The Court cannot refer to abatement for diminished area if the defendant does not ask for it.—3 W. R. (Act X) 124.

146. In a suit for — it is not always requisite to produce a copy of a notice to enhance.—*Ib.*

147. A tenant-at-will, holding on after notice of —, is liable to the highest rack-rent.—3 W. R. (Act X) 126 (4 R. J. P. J. 559). *See also* 7 W. R. 28. *But see* 223 *post*.

148. A variation in the rate of rent which does not affect the integrity of the jumma, does not rebut the presumption under ss. 3 and 4 Act X.—3 W. R. (Act X) 132, 7 W. R. 284.

149. Continuity of a tenure, as to rate of rent, not destroyed by zemindar's consent to sub-divide, add to, or subtract from, the ryot's holding.—3 W. R. (Act X) 135.

150. In a suit for — on the ground of increase in the value of produce, the rent will be raised in proportion to such increase only when it is proved to be a steady and normal increase.—3 W. R. (Act X) 142.

151. Homestead lands not protected from —.—3 W. R. (Act X) 144. *See* 11 W. R. 190.

152. A notice of — under s. 13 Act X need not state that it is for the ensuing year.—3 W. R. (Act X) 146.

153. A plaintiff seeking to enhance the rent of a rent-paying howala. is bound to show the existence of such howala.—3 W. R. (Act X) 150.

154. In a suit for —, the rejection of defendant's special plea as to his holding a mokurruree tenure, by reason of the pottah set up by him having been declared a forgery, does not preclude him from obtaining the Court's assistance on his other pleas.—3 W. R. (Act X) 151.

155. A holding at a uniform rate from the Permanent

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Settlement may be proved by presumption or indirect evidence.—3 W. R. (Act X) 151.

156. According to s. 13 Act X, a notice of — must be served by the farmer, and not the zemindar, as the person to whom "the rent is payable," notwithstanding an agreement between the zemindar and the farmer, by which the zemindar reserved to himself the right of serving notices of —.—3 W. R. (Act X) 157, 162; 8 W. R. 72; 23 W. R. 228. *But see* 18 W. R. 144.

157. Rule of proportion where not applicable.—3 W. R. (Act X) 160.

158. A landlord is not bound to serve notice of — on intervenors, unless on proof of his recognition of them as tenants.—3 W. R. (Act X) 166.

159. A *sursoree* jote tenure is not exempt from the operation of ss. 3 and 4 Act X, but is protected from — on proof of 20 years' payment of uniform rent.—4 W. R. (Act X) 20.

160. A *bhaolee* rent is not a fixed unchangeable rent to which the presumption under s. 4 Act X applies.—4 W. R. (Act X) 23, 8 W. R. 170. *But see* 12 W. R. 14, 11 W. R. 388, 15 W. R. 479.

161. The production of a pottah is not necessary before a ryot can claim the benefit of the presumption under s. 4 Act X.—4 W. R. (Act X) 25.

162. A notice of — according to the rate mentioned in an agreement, is necessary as to lands found in excess on measurement, where no term is specified in the agreement.—4 W. R. (Act X) 35.

163. A tenant having no right of occupancy, *i.e.* a mere tenant-at-will, is not exempt from — after notice.—4 W. R. (Act X) 46. *But see* 223 *post*.

164. A notice of — on the ground that the land will bear a higher rent, is a good and valid notice as against a tenant-at-will.—4 W. R. (Act X) 48.

165. Under s. 49 Reg. VIII of 1793 a suit for — is barred by proof of the existence of a tenure from the Decennial Settlement, unless plaintiff is an auction-purchaser, in which case he must show when he purchased, before he can insist on proof of the existence of the tenure 12 years before that Settlement.—5 W. R. 252.

166. The mention of a tenure in a jummabundee prepared seven years before the Decennial Settlement affords presumption of the existence of the tenure 12 years before that Settlement.—*Ib.*

167. The mother of an infant *sebait* cannot sue to enhance the rent of land held under a mokurruree pottah granted by a former *sebait* whose power to grant such a lease is disputed.—5 W. R. (Act X) 1.

168. A putneedar is protected from — under s. 15 Act X, notwithstanding a decree passed before that Act by which the zemindar was declared entitled to enhance, the latter having omitted to take any effectual steps before that Act to vary the rent since the Decennial Settlement.—5 W. R. (Act X) 10. *See* 11 W. R. 571.

169. Where a tenant's title to mokurruree tenure is established under a judicial decree of 1792, his having been at some time forced to pay a larger rent than was due, will not render him liable to enhanced rent for ever.—5 W. R. (Act X) 32.

170. A lease granted for building purposes by a party having the power to grant it, may protect the tenant from —; but, if granted by a person with a limited right in the estate, or a life-tenant, it cannot relieve the tenant from a claim to — made by a party succeeding to the life-tenant.—5 W. R. (Act X) 33.

171. The purchaser at an execution sale of a zemindaree with notice of an alleged mokurruree tenure, is entitled to enquire into the validity of such mokurruree, and to enhance the rents if the mokurruree be found not to exist.—5 W. R. (Act X) 38.

172. In a suit for —, the rent demanded must be proved to be fair and equitable, even if the tenant has no right of occupancy.—5 W. R. (Act X) 41, 11 W. R. 304. *See also* 223 *post*, and 13 W. R. 255.

173. Some *primâ facie* proof of an ostensible rent-free holding, and not a bare allegation by defendant of a rent-free holding, is necessary to bar a plaintiff in a suit for enhanced rent where the defendant admits a tenancy for one part of the claim but merely alleges a rent-free holding for the other.—5 W. R. (Act X) 48. *See* 14 W. R. 285.

174. A ryot's omission to object to the fairness of the rates when contesting notice of — does not preclude him from raising that objection in a subsequent suit.—5 W. R. (Act X) 51.

175. In cases of saleable tenure, the period of possession by the ryot's vendor is included in the 20 years mentioned in s. 4 Act X.—5 W. R. (Act X) 53, 10 W. R. 117.

176. The benefit of s. 4 Act X is not lost by the discovery among the title deeds of a pottah dated 1167, of the genuineness of which the present tenant has no means of judging.—5 W. R. (Act X) 56.

177. A *mourosee* pottah in which the rent is not fixed as invariable does not protect the ryot from —.—5 W. R. (Act X) 80.

178. A mere alteration in the rate of rent will not prove variation, unless the tenant submitted to or paid the enhanced rent.—5 W. R. (Act X) 83.

179. Nor will zemindar's papers filed or attested by gomashtas without proof that the ryot has paid at a varying rate.—*Ib.*

180. A talookdar who has paid an unchanged rent from the Permanent Settlement is protected from — under s. 15 Act X, notwithstanding the zemindar's right to enhance under a decree passed before that Act, in pursuance of which no steps were taken before the passing of the Act to vary the rent.—6 W. R. (Act X) 2.

181. S. 9 Reg. VII of 1822 does not entitle a person claiming from Government as private zemindar to have enhanced rents without proceeding under Act X.—6 W. R. (Act X) 5. *See* 259 *post*.

182. A notice of — in respect of excess lands, that is silent as to measurement, does not comply with s. 13 Act X.—6 W. R. (Act X) 23.

Or silent as to quantity of excess and how ascertained.—12 W. R. 226, 15 W. R. 71.

183. The admission by a ryot that his tenure was acquired by his father 30 or 35 years ago rebuts the presumption arising under s. 4 Act X.—6 W. R. (Act X) 27.

184. Under tenures fall with the original tenure of a defaulter (in this case a mokurruree tenure) sold for arrears of rent, and are liable to — by the auction-purchaser.—6 W. R. (Act X.) 31.

185. Uniformity in the amount actually paid is not required to raise the presumption under s. 4 Act X, but uniformity in the rate agreed upon, either expressly or impliedly, between the parties to be paid.—6 W. R. (Act X) 35.

186. The acceptance of old rent for years subsequent to the date of a decree enhancing the rent, is no waiver to plaintiff's claim to the higher rate decreed.—6 W. R. (Act X) 37.

187. What is a defective notice of — under cl. 2 s. 17 Act X.—6 W. R. (Act X) 41. *See also* 9 W. R. 349, 10 W. R. 323; 11 W. R. 515. *See* 215 *post*.

What was held a defective notice under cl. 3 s. 17.—20 W. R. 294.

What is a defective notice under cl. 1 s. 17.—15 W. R. 366, 17 W. R. 355, 18 W. R. 532.

What was held a sufficient notice under cl. 1 s. 17.—15 W. R. 391.

What was held a defective notice under s. 18 Act VIII of 1869 (B. C.)—20 W. R. 256, 22 W. R. 429. *See* 20 W. R. 417.

188. In a suit for — where defendant pleads a holding at a uniform rate from the Permanent Settlement, the mere existence of a pottah and amulnamah of 1215 is not conclusive evidence that the rate was then changed or first fixed.—6 W. R. (Act X) 46.

189. A ryot who holds lands in excess of the quantity included in his mokurruree pottah, is a trespasser, and cannot be sued for — in respect of it.—6 W. R. (Act X) 57. *See also* 15 W. R. 157, 17 W. R. 33. *But see* 6 W. R. (Act X) 97, 106; 15 W. R. 91, 493.

190. A ryot is not precluded from the benefit of the presumption under s. 4 Act X of having held at a uniform rent from the Permanent Settlement, merely by reason of his stating that he holds under a pottah not inconsistent with that presumption, though he may fail to prove the pottah.—(F. B) 6 W. R. (Act X) 57. 23 W. R. 58. *See* 9 W. R. 451, 12 W. R. 439. 15 W. R. 398.

191. The presumption under s. 4 Act X cannot be raised by a defendant who pleads uniform payment of rent for 20 years at 67Rs. when he has already paid 79Rs. under

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a decree against which he has not appealed.—6 W. R. (Act X) 69.

192. A notice of — served during the pendency of a suit in which only a declaratory decree can be passed, is inoperative, and will not enable the Court to give a decree in that suit for the payment of rent from the year subsequent to the service of the notice.—6 W. R. (Act X) 80.

193. A ryot who was held liable, by a decree of 1855, to pay an enhanced rent on the ground that he had not paid an uniform rent for 12 years before the Permanent Settlement, is not entitled, in consequence of the delay in the hearing of a portion of his claim, to a modification of the decree because of the alteration in the law made by Act X. —6 W. R. (Act X) 81.

193*a*. A judgment passed against a ryot in a contested suit will operate as a notice of —, taking effect for the year following that in which the decree was passed.—*Ib.*, 11 W. R. 3.

194. A suit under Act X will not lie for arrears of rent at enhanced rates in conformity with an unexecuted decree declaring plaintiff's right to enhance passed before that Act.—6 W. R. (Act X) 87. *See* 11 W. R. 571.

195. In a suit for a kubooleut at an enhanced rent, oral evidence of possession and payment at an uniform rate for 20 years is legally insufficient to raise the presumption under s. 4 Act X.—6 W. R. (Act X) 94.

196. Presumption under s. 4 Act X, how to be rebutted. —6 W. R. (Act X) 95. *See* 11 W. R. 496.

197. A ryot is entitled to no deduction under s. 17 Act X for expenses incurred in cultivating excess land for which he has paid no rent. He is a mere squatter and that section refers only to ryots with a right of occupancy.—6 W. R. (Act X) 97.

As to latter.—*See* 9 W. R. 552 ; 10 W. R. 123. 155.

198. A zemindar may sue to enhance *punchukee* lakheraj land without first suing for resumption.—7 W. R. 86.

199. Rule of proportion how to be applied in a suit for — where not only has the value of the produce increased, but the productive powers of the land have decreased, and the expenses of cultivation have increased.—7 W. R. 94.

200. Tenants who have held for a long period at a rent much below that payable for similar lands in the neighbourhood, are not entitled to allege expenditure of their own capital and labor against the landlord's claim to a kubooleut at an enhanced rate.—7 W. R. 97.

201. S. 17 Act X does not provide that, if one of the grounds in a notice of — be not proved, there shall be no decree on any other ground. 7 W. R. 172.

202. Ryots holding at fixed rates of rent which have not been changed from the time of the Permanent Settlement, are not liable to — even at the wish of an auction-purchaser under Act I of 1845.—(F. B.) 7 W. R. 176.

203. Where, notwithstanding the declared right of an ijaradar to enhance, a ryot is allowed to hold at the old rates, and at the expiration of the ijara the zemindar collects rents himself and then gives plaintiff a putnee with an assignment of the right to collect the uncollected rents of the intervening year, the ryot cannot be made to pay enhanced rates without some notice.—7 W. R. 190.

204. An *ex-parte* decision is not sufficient evidence as to the rates of similar lands in the neighbourhood on which to base an — of rent from 17Rs. to 50Rs.—7 W. R. 194.

205. Claims to — on the basis of "increased produce" and "increased value of produce" are inconsistent with one founded on inequality of rent as compared with that of neighbouring tenant.—7 W. R. 234.

206. A casual increase in the fertility of land is not a ground for permanent — of rent.—7 W. R. 235.

207. An auction-purchaser under Act I of 1845 cannot enhance the rent of a tenant, not a ryot or cultivator, without his consent.—7 W. R. 237.

208. Uniform payment of rent may be proved otherwise than by *dakhilas*.—7 W. 284, 21 W. R. 469.

209. A talookdar is liable to — only to the extent that his neighbouring talookdars pay for similar lands.—7 W. R. 285, 10 W. R. 245. *See* 16 W. R. 177.

210. A talookdar's rent cannot be enhanced to the same rate as that paid by cultivating ryots ; he is entitled to some reasonable profits.—7 W. R. 459, 10 W. R. 245.

211. A dependent talookdar's rent is not liable to —, *unless it can be shown to have changed since the Permanent Settlement, and he must be proceeded against under s. 15* (not s. 17) Act X.—8 *W. R.* 312.

212. Twenty years' unvarying rent will not exempt from payment on land in excess of jote.—8 W. R. 326.

213. No particular form of words is necessary to be used in a pottah to convey rights to hold at fixed rates barring future —.—8 W. R. 502. *See also* Mokurruree Tenure 15.

214. Informality of notice of — cannot be urged for the first time in special appeal.—8 W. R. 503.

Nor insufficiency of notice of —.—15 W. R. 520.

Nor non-service of notice of —.—13 W. R. 462.

Nor informal service of notice of —.—21 W. R. 368.

But that the notice and the evidence fall greatly short of the requirements of the law was allowed to be taken for the first time in special appeal.—14 W. R. 55.

214*a*. Meaning of the words "*poora dustoor* (or *full customary*) rate."—9 W. R. 65 ; 11 W. R. 31, 164.

215. The words "same class" in cl. 1 s. 17 Act X refer to the division of ryots into two classes, *viz.* those having, and those not having, rights of occupancy.—9 W. R. 83. *See also* 11 W. R. 142.

216. The words "prevailing rate" in same clause mean the rate generally prevalent, or the rate paid by the majority of the ryots in the neighbourhood.—*Ib.* *See* 15 W. R. 240.

But not what the rate of the neighbouring occupants would be if their rents were re-adjusted. -13 W. R. 107.

217. A Judge is wrong in calling for and acting upon the evidence of an expert in proof of the genuineness or otherwise of an agreement relied upon in a suit for arrears of rent at an enhanced rate.—9 W. R. 88.

218. An agreement executed by defendant in 1273, but making no mention of the period for which the rent was to be enhanced, cannot support a claim for arrears of rent for that year at an enhanced rate.—*Ib.*

219. By the words "increase of productive powers" in cl. 2 s. 17 Act X, the Legislature did not mean a capacity for realizing a higher rent for building or other purposes, but an increase of the productive powers of the land itself. —9 W. R. 122.

220. A plaintiff failing to prove ground of — by showing that defendant held at lower rates than the prevailing rate, is not entitled to a decree at the rates which defendant's lands will bear. -9 W. R. 119.

221. The words "surrounding rates" are not tantamount to the ground of — indicated in cl. 1 s. 17 Act X.— 9 W. R. 292.

Nor the words "pergunnah rates."—11 W. R. 571.

222. Claims to — on the basis of increased produce and increased value of produce are not incompatible, and even if so, cannot, by being advanced together, deprive plaintiff of the benefit of one or other of the conditions under cl. 2 s. 17.—9 W. R. 476.

222*a*. Where a tenure was or has become hereditary and transferable, and the rent has not been changed from the time of the Permanent Settlement, the tenants (being either mediate between proprietors and ryots) are protected from — by s. 15 Act X.—(P. C.) 9 W. R., P. C., 3. *See* 21 W. R. 439.

223. A landlord cannot recover enhanced rent from a ryot not having a right of occupancy, without proving the existence and the reasonableness of the grounds stated in his notice served under s. 13 Act X.—(F. B.) 10 W. R., F. B., 33.

224. S. 13 Act X (requiring a notice specifying the enhanced rent and the ground of —) applies not merely to ryots having a right of occupancy, but to all under-tenants and ryots.—(F. B.) *Ib.*

So also s. 14 Act VIII of 1869 (B. C.).—22 W. R. 416. *See also* 22 W. R. 548.

225. Where a plaintiff suing for arrears of rent at enhanced rates calls all the assessable lands of a village *māl* lands and there is nothing to show that the *ghatwalee* lands are excepted, the case cannot proceed in its existing form. —10 W. R. 87.

226. While a suit for — is pending, defendant is not liable for interest ; but after the rent is determined, he is liable for interest for all arrears from, and instalments after, that date.—10 W. R. 166.

227. In a suit for — of rent paid by *Shikmee* talookdars, plaintiff is bound to give data as to what would be a fair and equitable rate, and is competent under s. 10 Act VI of 1862 (B. C.) to measure the talook and ascertain assets.— 10 W. R. 213.

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228. Abatement of rent by order of Court in consequence of diluvion does not prove change in *rate* of rent, or affect a ryot's claim to the presumption under s. 4 Act X.—10 W. R. 246. *See also* 21 W. R. 401.

229. In a suit for a kubooleut at an enhanced rate where plaintiff seeks — not of his share of rent, but of the rate of a specific portion of land, the Court may allow him to amend or explain his plaint, or give him what he is entitled to under the law.—10 W. R. 362.

230. In a suit for —, where the right claimed by plaintiff to assess lands alleged to be in excess of Ghatwalee lands has never before been exercised, the right should first be determined in a civil suit.—10 W. R. 383.

231. The presumption under s. 4 Act X is not affected by the consideration whether the land in question has or has not remained a separate holding.—10 W. R. 429.

232. S. 17 Act X does not apply to talookdars or other intermediate holders, but only to ryots having rights of occupancy.—10 W. R. 455.

233. Act X does not apply to a suit for — of rent of land used for other purposes than agriculture and horticulture (*e.g.* building purposes).—11 W. R. 183, 547; 17 W. R. 151 (18 W. R. 234); 17 W. R. 441. *But see* 11 W. R. 190.

234. An order to a Lower Court to go in the usual way into a claim for — includes an enquiry into the service of the preliminary notice under s. 17 Act X.—11 W. R. 323.

235. In determining whether a party is entitled to the benefit of the presumption laid down in s. 15 Act X, the question to be tried is not whether the rent has been *paid* at a uniform rate, but whether it has been *changed* at any time within 20 years before suit.—11 W. R. 432. 19 W. R. 100.

236. In determining the enhanced rent which a ryot is liable to pay under s. 17 Act X, a Court cannot legally include *putwarreeah* and other *abwabs* paid by ryots in the neighbouring lands.—12 W. R. 29.

237. In a suit for — there must be a distinct finding as to the ground on which plaintiff is entitled to —.—12 W. R. 30.

238. S. 51 Reg. VIII of 1793 (looked at with ss. 13 and 15 Act X) does not require any notice in the case of a dependent talookdar, preliminary to a claim for — of rent; but in order to succeed in a suit under that section, plaintiff must show that he is about to enhance on one of the three grounds therein mentioned.—12 W. R. 112. *See also* 14 W. R. 274, 20 W. R. 459. *But see* 21 W. R. 439.

239. The rent of a talookdar cannot be enhanced under a notice served under s. 13 Act X treating him as a ryot having a right of occupancy.—12 W. R. 137.

240. The omission of the words "with similar advantages in the places adjacent" in a judgment under cl. 1 s. 17 is not sufficient in appeal to justify a remand or reversal.—12 W. R. 140.

241. In a suit for arrears of rent of a particular year at an enhanced rate, the Judge has no jurisdiction to declare plaintiff's right to obtain enhanced rents for the future.—12 W. R. 141, 15 W. R. 148.

242. Notice of — on the ground that the rents have gradually diminished is not based on the abatement contemplated by s. 51 Reg. VIII of 1793.—12 W. R. 320.

243. By serving a notice on defendant under s. 17 Act X, plaintiff was held to have treated defendant as a ryot having a right of occupancy and to be debarred from suing him for — of rent as an under-tenant or middleman.—12 W. R. 343. *See also* 14 W. R. 4.

244. Plaintiff cannot enhance the rent of a tenure held at a uniform rent from the time of the Permanent Settlement, even though the land in defendant's possession exceeds that covered by the original tenure.—12 W. R. 350.

244*a*. A notice under cl. 2 s. 17 Act X should not be prospective or future, but must specify a ground actually existing at the time it is issued.—12 W. R. 531.

So also a notice under s. 14 and cl. 2 s. 18 Act VIII of 1869 (B. C.).—22 W. R. 13. *See* 22 W. R. 485.

245. It is sufficient if a notice makes a ryot aware of the legal grounds on which — is sought, although it is not in the exact words of the law.—12 W. R. 537, 18 W. R. 203, 21 W. R. 33. *See* 22 W. R. 485.

A clerical omission, or mere informality in quoting the exact words of the law, so long as it in no way prejudices the ryot, cannot invalidate the notice of —.—15 W. R. 335; 17 W. R. 32, 278, 354, 495; 18 W. R. 273; 20 W. R. 203, 232; 22 W. R. 185. *See also* 19 W. R. 205.

But the omission of the words "same class of ryots" in a notice under cl. 1 s. 17 Act X, even if unintentional, is sufficient to invalidate a claim for —.—18 W. R. 532.

And a suit for — cannot be maintained upon a notice so defective in its form as to preclude the tenant from making a defence.—25 W. R. 28.

246. Procedure to be adopted in a suit for — where defendant pleads that he is a *shamilat* talookdar, *i.e.* protected under s. 5 Reg. VIII of 1793.—13 W. R. 71.

247. In a suit for —, the evidence of three putwarees whose jummabundees showed the rates paid by the majority of the ryots, was held sufficient to prove the "prevailing rate" under cl. 1 s. 17 Act X.—13 W. R. 346.

248. In a suit for rent at an enhanced rate where defendant, availing himself of s. 4 Act X, pleads uniform payment of rent for 20 years, it is necessary for him to give some evidence of the genuineness of the receipts which he produces.—13 W. R. 462.

249. In a suit for — on different grounds, the fact of the plaintiff's relying on one ground only, and of the judgment resting on that ground only, does not show a waiver of the other grounds.—14 W. R. 60.

250. Although in a suit for —, the parties should not be tied down too strictly to the statements made by them, yet the plaintiff must to some extent be limited to the case which he makes in the plaint.—*Ib.*

251. A suit for — under Act X can only be brought against an occupant of land who has a right to possession.—14 W. R. 100.

252. The holder of a *tullubi-brihmotur* tenure or a tenure of an intermediate character is entitled to a notice under s. 51 Reg. VIII of 1793 before his rent can be enhanced.—14 W. R. 251, 274; 25 W. R. 200. *See also* 15 W. R. 335.

So also tenants holding a permanent transferable interest in the land intermediate between the proprietor of the estate and the ryots.—21 W. R. 439.

253. Where a party who was not personally a cultivator of the land but held a large jumma with a number of ryots below him, was treated in a notice of — under cl. 1 s. 17 Act X as an ordinary ryot having a right of occupancy, *Held* that the notice was not on that account illegal or informal.—15 W. R. 56.

254. A decree for — of rent can have no retrospective effect.—15 W. R. 119.

255. Where a plaintiff, even after measurement, claims rent for a much larger excess of land than exists, the Lower Court is right in refusing to help him to recover rent on a small excess found in defendant's possession.—15 W. R. 366.

256. The "dependent talookdars" mentioned in Reg. VIII of 1793 are those who are actual proprietors of the lands comprising their talook as described in s. 5. S. 51 does not include talookdars whose talooks are held under documents granted by proprietors, which do not expressly transfer the property in the soil, and who are treated under s. 7 as lease-holders only.—15 W. R. 474.

257. A pottah giving land for building purposes and reciting that there should be no abatement of rent or increase of jumma, was held to grant the land at the rate then fixed for ever, even though no such words as *istemraree*, etc., were used.—15 W. R. 493.

258. What is a valid notice of — under s. 13 Act X, in the case of a tenant who has no right of occupancy.—15 W. R. 520.

259. An under-tenant, who has entered into no fresh engagement at the time of re-settlement, is entitled to notice of — under s. 13 Act X, which must be read as qualifying the provisions of ss. 7 and 9 Reg. VII of 1822.—16 W. R. 153. *See also* 20 W. R. 207.

260. A suit for — of rent on the ground of increased value of the land by reason of the existence of a rum distillery (the said value not being attributable to any of the three causes specified in s. 17 Act X, which clearly relate to lands let out for agricultural purposes) will not lie under Act VIII of 1869 (B. C.).—16 W. R. 216. *See also* 17 W. R. 441.

261. A *surburakaree* tenure is a permanent transferable tenure liable to — of rent under s. 15 Act X.—16 W. R. 289, 19 W. R. 99.

262. S. 17 Act X is applicable where the land was included in the original tenure, but where a fresh measure-

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ment has shown that there was a mistake in the former measurement and that more rent ought to be paid on account of such land.—17 W. R. 33. *See* 22 W. R. 246.

263. In a suit for — of rent where a Lower Appellate Court decided that the tenure originated at the time a *kuboolеut* (of the year 1200) had been given, and that there was no presumption under s. 4 Act VIII of 1869 (B. C.) of uniform rent, there was held to be no error of law.—17 W. R. 349. *But see* 25 W. R. 331.

264. Where a party took an *ijara* of an estate while certain ryots were under notice of —, but neither contributed or offered to contribute necessary expenses, he was held not entitled to share in the increased rents.—17 W. R. 382.

265. In order to maintain a suit for — on the ground mentioned in cl. 3 s. 17 Act X, it is necessary to prove the existence of the alleged *excess* and the *rate* at which such excess land ought to be assessed.—17 W. R. 558.

266. A person by whom notice of — was served at the time when the rent was payable to him, is entitled, either entirely by a sale, or partially by a lease, to convey to the purchaser or lessee the rent with the incident of its being liable to — under that notice. The purchaser or lessee is not obliged to serve fresh notice of —.—18 W. R. 144.

267. An intermediate holder, though not liable for the rate of rent paid by simple occupant ryots, is still amenable to s. 17 Act X.—18 W. R. 528.

268. The fact of a *butwarra* having taken place will not prevent a co-sharer from enhancing the rent of a ryot on his particular share, notwithstanding that the original arrangement of the jumma had been made on the understanding that the tenant paid such and such a rent at the time of the *butwarra*.—*Ib.*

269. In a suit to set aside notice of —, where plaintiffs put in documents showing that they had long held at existing rates and there was no evidence that the land had not been held at uniform rates from the Permanent Settlement, plaintiffs were held entitled to the presumption prescribed by s. 4 Act VIII of 1869 (B. C.).—19 W. R. 205. *See also* 21 W. R. 403.

270. In a suit by a zemindar against his talookdar for — of rent under s. 51 Reg. VIII of 1793, the notice served was held to be defective because it did not state when, and for what reason, the talookdar had received an abatement of his jumma and thereby rendered himself liable to —.—19 W. R. 338.

271. A decree of the late Sudder Court fixing an enhanced jumma for a certain jote, passed before the promulgation of Act X, was held not to have become ineffectual by the fact of no rents having been recovered under it.—20 W. R. 243.

272. The sale of a portion of a tenure involving a distribution of the rent over two parts does not amount to a change of rent within the meaning of s. 4 Act VIII of 1869 (B. C.) so as to deprive defendant of the benefit of the presumption under that section.—20 W. R. 419.

273. Ss. 3 and 4 Act VIII of 1869 (B. C.) apply to invalid lakheraj grants resumed at a time subsequent to the Permanent Settlement.—20 W. R. 466.

274. A Settlement officer is bound to record in the jummabundee the existing rights of cultivators, and cannot impose an enhanced rent without notice on those entitled. If he enters a higher rate in spite of protest, such entry does not conclude the tenant from pleading non-liability.—21 W. R. 410.

And the jummabundee must show the consent of all the ryots before they can be bound by it.—22 W. R. 540.

275. In suit for — of rent, although plaintiff cannot give evidence as to the rate of rent payable by tenants of the same class holding lands of precisely similar quality and adjacent to those occupied by the defendant, yet he may be allowed to give evidence as to such lands so occupied, of a somewhat better quality than those occupied by the defendant, and the Court may allow him such a rate of rent as, regard being had to the slight difference in the quality of the lands, may be in conformity with the spirit of the rent law.—22 W. R. 335.

276. An increase, either permanent or likely to last for a considerable time, caused by natural agency in the productive powers of the land, is one of the elements to be taken into consideration in determining its increased value within the meaning of s. 18 Act VIII of 1869 (B. C.).—22 W. R. 350.

277. A declaration in a former suit that defendant's talook is not protected from — either under s. 16 or s. 17 Act VIII of 1869 (B. C.), does not relieve plaintiff from the necessity of proving a case under s. 51 Reg. VIII of 1793, under which alone he can maintain his suit.—22 W. R. 383.

278. A suit will not lie to enhance the rent of an undivided fractional share of a tenure.—22 W. R. 385.

279. In a suit for — of rent, if plaintiffs are unable to show that they are entitled to the rent exactly as they claim it, the Court is not debarred from giving them a decree for such enhanced rent as it thinks ought to be paid, *e.g.* to divide the land into different classes and assign a separate rental to each description.—22 W. R. 456.

280. In a suit for enhanced rent, the presumption from uniform payment of rent for 20 years was held not rebutted by the mere fact that the defendants had acquired the tenure from another person originally in 1226.—22 W. R. 475.

Or by the existence of a kuboolеut for the year 1245, such a kuboolеut being as much consistent with the confirmation of a pre-existing rent as with the settlement of a new rent; the presumption from uniform payment of rent for 20 years can only be displaced by positive proof to the contrary.—25 W. R. 331.

281. A landlord seeking to obtain an enhanced rent on account of neej-jote land held by a tenant without a right of occupancy, has no right to obtain a judicial assessment upon the footing of a notice under ss. 14 and 5 Act VIII of 1869 (B. C.). His right, in accordance with s. 8, is to make his own terms with the tenant, or to turn him out of occupation. This he can do by serving the tenant with a reasonable notice to quit unless he agrees to pay the rent required, and if the tenant continues in occupation he must be taken to have agreed by implication to pay the said rent.—22 W. R. 548.

282. Except in the case of agricultural holdings, landlords and tenants cannot be compelled to enter into a contract against their inclination, nor can a tenant who is holding at an inadequate rent and has no right to hold the same without alteration of the rate, be compelled by proceedings in the Civil Court to pay at a higher or enhanced rate.—23 W. R. 61.

Nor can there be — in the sense in which that word is used with reference to permanent agricultural holdings in s. 8 Act VIII of 1869 (B. C.); but a landlord whose tenant has not got a permanent tenancy, has a right to put an end to the tenancy or to continue it upon any terms that he can get his tenant to agree to; and if the tenant holds without any agreement as to the rate of rent, the landlord is entitled to a fair rent.—24 W. R. 412.

283. A suit for — is rightly brought against a registered tenant, although he has conveyed away his interest in the land, if he has not given a regular notice of relinquishment.—23 W. R. 102.

284. In a suit for arrears of rent at an enhanced rate, where the question as to service of notice has been decided against plaintiff, there is no reason for trying any other issue.—23 W. R. 442.

285. Act X of 1859 does not entitle a lessor, without the consent of the lessee, to enhance the rent due on account of a lease of a certain right.—23 W. R. 458.

286. Where personal service of notice upon a co-sharer under s. 14 Act VIII of 1869 (B. C.) is found to be impracticable, the notice may be stuck up at the adjoining house of another co-sharer.—24 W. R. 14.

287. A decree may declare that a tenure is not protected from —, but it cannot declare that the decree-holder is entitled to enhance the rent at a reasonable rate.—24 W. R. 92.

288. A suit for — can only be determined on its merits, and not on the ground of an existing famine.—*Ib.*

289. A notice describing an intermediate holder as an ordinary tenant, and avowedly served under s. 18 Act VIII of 1869 (B. C.), cannot be considered such a notice as is required by s. 51 Reg. VIII of 1793.—24 W. R. 190.

290. Where three suits were brought against four defendants holding three distinct tenures, for — of the rent of each tenure,—*Held* that they ought not to have been tried together, as the evidence in each case would need to be given separately so as to show the rates severally applicable.—24 W. R. 217.

ENHANCEMENT (*continued*).

291. A landlord who can terminate his tenant's tenancy by a reasonable notice to quit, can also, without giving a positive notice to quit, raise the tenant's rent by serving a reasonable notice upon him that in the ensuing year he will require a higher rent; the right of the landlord to raise his rents to a fair and equitable amount by such a notice being recognised by s. 13 Act X of 1859 and s. 14 Act VIII of 1869 (B. C.).—24 W. R. 441.

292. A suit for the determination of the rate of rent which the defendants are liable to pay plaintiff in the future will lie under Act VIII of 1869 (B. C.).—25 W. R. 318.

See Ameen 9.
Appeal 66, 95, 168.
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Auction-Purchaser (Revenue Sale) 5.
Churs 43, 44, 45, 49, 52.
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,, (Estoppel) 23, 41, 67, 85, 101, 122, 126.
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,, (Act X of 1859) 13, 24, 28, 30, 31.
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Mokurruree Tenure 12.
Notice 5, 6, 8, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 25, 27, 28.
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Plaint 15.
Pottah 9, 21.
Practice (Appeal) 65, 106.
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Punishment 2, 5.
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Res Judicata 20, 57, 90.
Ryots 2.
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Under Tenures 1.

Equitable Mortgage.

A memorandum endorsed on a promissory note depositing title-deeds as collateral security, after the loan had been given and the title-deeds deposited, does not create an — and does not come under s. 17 Act XX of 1866. The — was created by the agreement evidenced by the loan and the deposit of the title-deeds.—(O. J.) 20 W. R. 150.

See Bank of Bengal 2.
Mortgage 80, 84.

Equitable Rights or Liabilities.

See Account 9.
Assignment 6, 8.
Auction-Purchaser (Execution Sale) 30.
Benamee 24, 26.
Building 9, 12.
Contract 38.
Contribution.
Costs 72.
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Equitable Mortgage.
Hindoo Widow 103, 106.
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Limitation (Act X of 1859) 36.
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Practice (Execution of Decree) 158.
,, (Suit) 25.
Pre-emption 72.
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Railway 3.
Ratification 2.
Right of Property 2.
Sale 189, 222.
Set-off.
Sheriff 5.
Timber 6.
Trespasser 4.
Vendor and Purchaser 70.

Error.

1. A mistake of law is not an exercise of discretion.—1 R. J. R. J. 118 (Sev. 191).

2. The — of a Deputy Magistrate in proceeding by warrant instead of summons furnishes no ground for quashing his proceedings.—1 W. R., Cr., 16.

3. Where a conviction is erroneous in law, the case should be remanded with directions to record a legal finding on the evidence, and to pass sentence in accordance therewith.—1 W. R., Cr., 49; 3 W. R., Cr., 38. *See* 3 W. R., Cr., 40.

4. In a suit on a *kabala* in which defendant relies on a deed of gift from a third party who is also vendor of the plaintiff, it is an — in law to look into a written statement made by the third party (after defendant's deed) in a case to which the latter was not a party, and to take for a standard a signature in a deed sought to be set aside as spurious.—9 W. R. 150.

5. Where the receiver of an estate, receiving permission to bring a suit on behalf of the parties interested, sues in his own name, the objection on the ground of this —, if not taken in the Court below, cannot prevail in appeal.—12 W. R. 117.

6. According to ss. 283 and 297 Act X of 1872, the — to justify the setting aside of a criminal trial on the ground of failure of justice, must be a material —.—19 W. R., Cr., 28. *See also* 21 W. R., Cr., 43; 24 W. R., Cr., 26, 62.

So also under ss. 291 and 297.—21 W. R., Cr., 88; 25 W. R., Cr., 67.

7. The want of any charge of an attempt to commit rape is a defect or — which is cured by s. 283 Act X of 1872.—25 W. R., Cr., 51.

See Appeal 1, 8, 25, 90, 171.
Appellate Court 11.

ERROR (*continued*).

See Bond 20.
Compromise 14.
Conviction 8.
Costs 22.
Criminal Proceedings 6.
Curator 2, 3.
Damages 87.
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Ejectment 108.
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,, (Documentary) 101.
,, (Estoppel) 93, 117.
,, (Oral) 35.
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Informality.
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Kubooleut 8.
Land Dispute 22.
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,, (Reg. III of 1793 s. 14) 6.
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,, (Criminal Trials) 1, 55, 66.
,, (Execution of Decree) 3, 6.
,, (Review) 23, 66, 84, 96, 106.
Registration 149.
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Special Appeal 3, 6, 10, 16, 28, 51, 52, 70, 75, 100, 115, 126, 144.
Splitting Cause of Action 12.
Stamp Duty 88.
Vendor and Purchaser 31, 48.
Witness 35.

Escape.

1. The punishment for — from lawful custody under s. 224 Penal Code, in a case in which that is one of the offences of which the prisoner is convicted, must be in addition to any punishment awarded for the substantive offence.—8 W. R., Cr., 85.

2. The separate commitment upon a charge under s. 224 of — from lawful custody whilst under trial before the Sessions Court, was cancelled, the offence being one cognizable by the Magistrate.—17 W. R., Cr., 14.

3. Where a person apprehended on a charge of a cognizable offence escapes from lawful custody, his liability to punishment is not affected by the circumstance that a competent Court determines his offence to be other than that with which he has been charged. But if charged with a non-cognizable offence, the police officer who apprehends him without a warrant does not have him in lawful custody, and his — is not punishable under s. 224 Penal Code.—24 W. R., Cr., 45.

4. Where the High Court set aside an order sentencing a person to ten months' imprisonment for escaping from a confinement which he was undergoing without warrant of law and without having committed an offence.—25 W. R., Cr., 1.

See Cumulative Sentences 10.

Escheat.

1. On the death of a Brahmin without heirs, the sovereign power in British India is entitled to take his estate by —, subject to the trusts and charges previously affecting the estate.—(P. C.) 2 W. R., P. C., 59 (P. C. R. 417). *See also* (P. C.) 25 W. R. 239.

2. The English law of forfeiture of the personal property of persons committing suicide, if applicable to Europeans in India, was not applicable to natives.—(P. C.) 1 W. R., P. C., 14 (P. C. R. 515).

3. In the absence of any law of feudal —, the title of Government to property on failure of heirs rests on universal law.—4 W. R. 13.

4. When a person enters upon the lands of another who has deceased without heirs, the Government is not estopped from calling his title into question, although it may have allowed his entrance and accepted revenue from him.—*Ib.*

5. There is no authority upon which the power of taking by — can be attributed to the zemindar. The principles of English feudal law are clearly inapplicable to a Hindoo zemindar. On the other hand, it is clear that, if the zemindar has not such a right, the general right of the Crown subsists and must prevail.—(P. C.) 25 W. R. 239.

See Hindoo Widow 29.
Limitation 51.
Mokurruree Tenure 28.
Security 7.

Escrow.

Evidence is not admissible to show that a deed delivered to the party in whose favor it is executed, was intended to operate as an — only.—2 Hay 576.

Estoppel.

See Evidence (Estoppel).

Eviction.

See Ejectment.

Evidence.

1. Proof of *bona fides* is necessary in sale by grandmother to granddaughter and in attempt to oust stranger. —W. R. F. B. 77.

2. Taking of additional — when required by Appellate Court.—W. R. F. B 124 (Sev. 81). *See* 23*a*, 24 *post*.

3. Magistrate's proceedings under Act IV of 1840 are not necessarily conclusive in a suit for possession by the unsuccessful party.—1 Hay 7.

4. In questions of pedigree, hearsay —, though to be received with caution, is not inadmissible; by the Mahomedan law it is held to be good respecting death, descent, and marriage; and by s. 47 Act II of 1855 the declarations of illegitimate members of the family and others are admissible as evidence after the death of the declarants in the same manner and to the same extent as those of deceased members of the family.—1 Hay 528. *See also* 9 W. R. 151.

5. In questions of pedigree, hearsay — is not admissible unless the relation's declarants be dead.—2 Hay 97.

6. Copies of depositions of witnesses examined in a case in which the defendants were not parties are not admissible in —.—2 Hay 129, 8 W. R. 509. *But see* 5 W. R. 43.

7. A deed purporting to be an absolute conveyance can be proved by extraneous — to be a conditional conveyance. —2 Hay 166.

8. The recital in a lease granted by a husband of his wife's property, that he was empowered by mookhtarnamah to manage her business generally, is not — against the wife that such a mookhtarnamah existed.—2 Hay 446 (Marshall 373).

9. Analysis of conflicting — in a suit setting up a will. In examining — with a view to test whether several witnesses who bear testimony to the same facts are worthy of credit, it is important to see whether they give their — in the same words, or whether they substantially agree.— (P. C.) Marshall 436.

EVIDENCE (*continued*).

10. A written statement under Act VIII of 1859 is not in the nature of confession and avoidance, but (if it is to be used as — against the party making it) must be taken altogether and not in part.—W. R. Sp. (Act X) 26; 2 R. J. P. J. 148; 7 W. R. 29; 9 W. R. 130, (F. B.) 190, 290; 22 W. R. 220. *But see* 10 W. R. 189, 16 W. R. 257.

11. A general custom cannot be proved by the statements of two individuals.—W. R. Sp. (Act X) 26; 2 R. J. P. J. 148.

12. The neglecting of the first Court in taking down a memorandum of the substance of the — in contravention of s. 172 Act VIII of 1859 is not an irregularity which affects the merits of the case, and is no ground for interference.—Sev. 77.

13. It is contrary to sound policy, as well as to the whole spirit of Act VIII of 1859, to grant to a party a delay which would give an opportunity of either fabricating — or so arranging the — that it might fit in with that of the opposite party previously given.—Sev. 536.

14. Defendant was charged with plunder and assault. The Deputy Magistrate found him guilty of assault only, and fined him for assault, but thought upon the — that he was guilty of plunder. In the civil suit the Judge, acting upon that opinion of the Deputy Magistrate, decided in favor of the plaintiff. *Held* that the Judge ought to have decided upon the — without reference to what the Deputy Magistrate thought when the case was before him. —Sev. 743. *See also* 9 W. R. 77.

15. The decree of a Court of competent jurisdiction fixing the rates of adjacent lands can be received as — of the value of the lands in dispute, but is not conclusive. - 3 R. J. P. J. 229.

16. A copy of a disputed deed cannot be taken as — without proof that the original is out of the power of the party producing the copy. Admitting the existence of the original is not admitting the correctness of the copy.— W. R. Sp. 186.

17. Where an appellant complains that he had not an opportunity of giving his — to the Court below, it is for him to show that he had tendered — which the Court had rejected.—(P. C.) 5 W. R., P. C., 25 (P. C. R. 45).

18. Test in cases of conflicting—.—(P. C.) 5 W. R., P. C., 26 (P. C. R. 46).

Conduct of witnesses.—(P. C.) 26 W. R. 55.

19. The observation that the — of a witness proves too much is not rebutted by the suggestion that it cannot be supposed that the witness was suborned, for, if he was possessed of common shrewdness, he would not have overdone the thing and thus have given rise to such an objection.—(P. C.) 5 W. R., P. C., 127 (P. C. R. 91).

20. In estimating the value of —, the testimony of a person who swears positively that a certain conversation took place is of more value than that of one who says that it did not.—(P. C.) 6 W. R., P. C., 55 (P. C. R. 161).

21. No strict rule as in England can be prescribed regarding the admissibility of — in the native Courts in India.—(P. C.) 4 W. R., P. C., 121 (P. C. R. 300). *See also* 11 W. R. 396, 22 W. R. 355.

22. The general fallibility of native — is no ground for concluding against a transaction where the probabilities are in favor of it.—(P. C.) 4 W. R., P. C., 128 (P. C. R. 307); 7 W. R., P. C., 13 (P. C. R. 667); 11 W. R. 345; 17 W. R. 1.

23. In a suit for the recovery of a debt upon an agreement neither brought forward nor alleged to be in existence when the same demand was successfully disputed in a former suit brought during the infancy of the defendant's predecessor, the plaintiff having failed to account satisfactorily for the non-production of the agreement before, the suit was dismissed.—(P. C.) 3 W. R., P. C., 50 (P. C. R. 330).

23*a*. The power of an Appellate Court under the Code of Civil Procedure (*see* s. 355) of taking of its own motion fresh —, should be exercised with caution, and the reasons for its exercise should be recorded.—(P. C.) 7 W. R., P. C., 10 (P. C. R. 651). *See* 10 W. R. 228, 378; 12 W. R. 223; 13 W. R. 85, 328; 14 W. R. 19, 236; 15 W. R. 507; 21 W. R. 416; 24 W. R. 20; 25 W. R. 246; (P. C.) 26 W. R. 55. *But see* 13 W. R. 303.

24. The provision in the Code of Civil Procedure, which requires Judges who admit fresh — on an appeal to record their reasons, though not a condition precedent to the reception of the —, is yet one that ought at all times to be strictly complied with.—(P. C.) 7 W. R., P. C., 21 (P. C. R. 676). *See also* 10 W. R. 378; 11 W. R. 4, 47; 12 W. R. 52, 223, 215; 15 W. R. 429; (P. C.) 26 W. R. 55. *But see* 13 W. R. 303.

25. Decrees and proceedings to which defendants were not parties are not admissible as — against them.— 1 W. R. 88. *See also* 9 W. R. 91, 25 W. R. 57. *But see* 43 *post.*

26. So long as the case of a party is not closed, he is entitled to produce — even though he may have declared that he would not do so.—1 W. R. 263 (3 R. J. P. J. 329). *See also* 3 W. R. 108. *But see* 10 W. R. 284.

27. The former deposition of a witness should not be read until after his examination in Court.—1 W. R., Cr., 14.

28. The — of a wife is not admissible against her husband in corroboration of other —.—1 W. R., Cr., 17.

29. The production of a forged document in — does not relieve the Court from examining the whole —.— 2 W. R. (Act X) 99; 3 W. R. (Act X) 149.

30. The production of a false deed does not necessarily nullify other —.—3 W. R. 57.

31. What — is necessary to prove the current custom of a village as to rates of rent.—3 W. R. (Act X) 125.

32. When the first Court has decided in favor of a party without receiving certain — tendered by him, the Appellate Court should, before reversing that decision, allow that party the opportunity of adducing that —.— 3 W. R. (Act X) 133. *See also* 10 W. R. 332, 23 W. R. 63.

33. In a civil proceeding a husband or wife can give — for or against each other.—4 W. R. 83.

34. A written statement cannot be called for by an Appellate Court and read as — against any party to the suit save the person by whom it is made and those who are bound by admissions made by him.—5 W. R. 50. *See also* 12 W. R. 39. 15 W. R. 437, 16 W. R. 257.

35. Hearsay or mediate evidence when admissible.— 5 W. R. (Act X) 31.

36. The issues fixed by the Court, and not the pleadings, ought to be the guide to the parties as to the production of —.—5 W. R. (Act X) 72.

37. A Magistrate should take — as to the general character of a person charged with bad livelihood, and not convict him on the report of a Police Officer, which is not —. —5 W. R., Cr., 2; 6 W. R., Cr., 52.

38. Mahomedan Law of Evidence.—*See* Compounding 1; Divorce 1, 5, 6; Dower 8, 9, 10; Mahomedan Law 36.

39. A Court is bound to decide upon — without reference to any previous arrangement between the parties as to the mode in which the — is to be dealt with.—6 W. R. 82.

40. A Court must examine the — put in by both parties, and state specifically the reasons upon which it accepts the — of the one side or rejects that of the other.—6 W. R. 87.

41. Manner in which Judges should record the — of witnesses.—6 W. R. 112. *See also* 24 W. R. 162.

42. An Act IV of 1840 award is no — of title, one way or the other.—6 W. R. 155; 9 W. R. 91.

Quære whether it is receivable as —.—14 W. R. 493. *See* 86 *post.*

43. Admissibility in — of judgments or decrees in former suits.—6 W. R. 232, 14 W. R. 200, 19 W. R. 299.

Or proceedings in former suits.—24 W. R. 265.

Or decrees against other parties.—17 W. R. 558, 23 W. R. 293.

44. S. 48 Act II of 1855 is applicable to criminal trials. —6 W. R., Cr., 5.

45. Comparison of seals is at best but a fallible test.—*Ib.*

So also comparison of signatures is a mode of ascertaining the truth, which ought to be used with very great care and caution.—22 W. R. 272.

46. When a Civil Court authorizing a criminal prosecution, instead of committing the parties, refers the proceedings and leaves it to the Magistrate to convict or not as he thinks proper, the depositions taken before the Civil Court are not admissible in —; but by s. 57 Act II of 1855, the improper admission of evidence is not of itself ground for the reversal of a sentence where there is other evidence sufficient to justify it.—6 W. R., Cr., 41.

So also as to reversal of a decision on appeal in a civil case.—14 W. R. 19.

EVIDENCE (*continued*).

47. *Improper admission of a chowkeedar's statement as* to previous bad character of accused commented on.—6 W. R., Cr., 72; 8 W. R., Cr., 11.

48. Causing disappearance of — of a crime.—*See* Culpable Homicide (not amounting to murder) 6; Murder 19; 53 *post*.

49. Statements in grounds of commitment cannot be used as — against a prisoner if not reduced to writing and without the examination on oath of the committing officer in the presence of the prisoner.—6 W. R., Cr., 85.

50. Where the record of a case is lost in transit from the Lower Court to the Appellate Court, secondary — may be received by the latter, or additional — under s. 355 Act VIII.—7 W. R. 18.

51. A Judge is not at liberty to leave out of consideration any of the — where the witnesses are unimpeached in their general character and uncontradicted by testimony on the other side, and where the facts they relate are not improbable. The probative force of concurrent testimony is the compound ratio of the probabilities of the testimonies taken singly.—7 W. R. 105. *See* 14 W. R. 482.

A matter in issue between parties ought not to be determined merely upon *a priori* probability, however improbable the features of the case put forward by one of the parties.—21 W. R. 284.

Probabilities, however useful as aids in considering the value of —, can seldom be safely had recourse to alone for the purpose of entirely invalidating direct —.—21 W. R. 436.

52. The admission of hearsay — prohibited.—7 W. R., Cr., 2, 25; 15 W. R. Cr., 37.

What is and what is not hearsay —.—18 W. R., Cr., 16.

53. S. 201 Penal Code refers to others than the actual criminals who, by causing disappearance of —, assist the principals to escape. The person who commits an offence and afterwards conceals the — of it, cannot be punished on both heads of the charge.—7 W. R., Cr., 52.

54. When a deposition is received in — under s. 369 Act XXV of 1861 at a trial before a Sessions Judge, there ought to be on the record distinct proof of the existence of such a state of things as makes the deposition legal.—7 W. R., Cr., 114.

55. Where the records in a case were not forthcoming, all the papers in the case were ordered to be sent back to the Lower Court to take further — and to send it with its opinion to the Appellate Court for final disposal.—8 W. R. 38.

56. Where a plaintiff claiming under a bond desires to show that something was intended by the parties beyond the grammatical import of the terms of the contract, he should prove this by other —; the Court cannot supply the defect.—8 W. R. 466.

57. Where a Court of first instance sets aside its own *ex-parte* judgment, and after a new trial, in which it takes fresh — as well as admits that originally recorded, again gives plaintiff a decree, it is the duty of the Lower Appellate Court to enquire under s. 57 Act II of 1855 whether, independently of the — originally recorded, there was sufficient to justify the decree.—8 W. R. 499.

58. Police papers ought not to be taken judicial notice of either as — or consulted in order to test —.—8 W. R., Cr., 35, 68; 9 W. R. 21; 11 W. R. 531. *See also* 11 W. R., Cr., 35; 13 W. R., Cr., 22.

59. The question of a child's competency to give — within the meaning of s. 14 Act II of 1855, is one for decision by the Judge and not by the jury.—8 W. R., Cr., 60.

60. Deeds of sale or wills, which divert the course of inheritance, must be proved by legal — before they can become operative.—9 W. R. 257.

61. A plea of guilty, but not a verdict of conviction in a Criminal Court, may be considered in — in a civil case.—10 W. R. 56.

62. The fact of a party putting his name as a witness to his brother's signature to a deed of conveyance is — against such party.—10 W. R. 293.

63. Whether a communication was one as between mookhtar and client is not a matter for the consideration of the jury, but a point of law for the decision of the Judge.—10 W. R., Cr., 14.

64. Under s. 24 Act II of 1855 there is no privilege as to communications between *mookhtars* and their clients.—*Ib.*

65. Evidence of character and previous conduct of a *prisoner should not be allowed to go to the jury.—10 W. R. Cr., 17.*

66. An award under Act IV of 1840 between an intervenor and a party other than the plaintiff, is no evidence against the plaintiff.—11 W. R. 113.

67. The notes of an enquiry held before a Registrar are not admissible as — in a criminal trial.—11 W. R., Cr., 13.

68. Mere theories of medical men or skilled witnesses of any sort should not be relied on against facts positively proved.—11 W. R., Cr., 25.

69. Corpus delicti. *See* Evidence (Presumptions) 19; Murder 6, 23, 28.

70. An objection to the reception of secondary — is properly made in the Court of first instance, but cannot be allowed in any Appeal Court.—12 W. R. 13.

Or in special appeal.—24 W. R. 232.

71. Evidence taken in the absence of a defendant at an *ex-parte* hearing cannot be used against him on a re-trial.—12 W. R. 130.

72. It is for a party to adduce his own — and not for the Court to ask him to do so.—12 W. R. 470.

73. A Civil Court cannot rely on the — taken in a Criminal Court but must take its own — and determine on it.—12 W. R. 477.

74. The irregularity and injustice of using against a prisoner in a subsequent trial the deposition of witnesses given in a previous case against other persons, commented on.—12 W. R., Cr., 3.

75. The attestation of a Magistrate to a deposition is *primâ facie* proof of the fact of that deposition, and so also of the fact why he could not proceed with the further examination of a witness.—12 W. R., Cr., 51.

But the attestation should be in the Magistrate's own handwriting and not by a lithographed stamp.—14 W. R., Cr., 81.

76. How the — of a deceased witness may be made legally admissible.—12 W. R., Cr., 80.

77. A Police Officer's report, though not — under s. 155 Act XXV of 1861, of the facts stated therein, may be — to contradict or explain his — as given before a Magistrate, and an accused has a right to cross-examine the Policeman as to the contents of such report and to call for its production.—13 W. R., Cr., 1.

78. The High Court declined to interfere with an order of a Magistrate directing security to be taken for the preservation of the peace, where the — was sufficient to warrant the order, although such — was taken in the vernacular and in disregard of s. 267 Act XXV of 1861.—13 W. R., Cr., 20.

79. A Police report is *per se* no legal — in a case of land dispute under s. 318 Act XXV of 1861.—15 W. R., Cr., 42; 16 W. R., Cr., 17.

80. Evidence taken before the Magistrate, unless shown to have been used as — at the Sessions trial, cannot be used in appeal.—17 W. R., Cr., 5.

81. The rule of — that letters found in the house of a person after his arrest, and whilst in custody, cannot be used in —, is subject to the exception that the existence of the letters found may be established either by direct proof or by strong presumptive —.—17 W. R., Cr., 15.

82. The improbability of plaintiff having received payment for one bill while an older one remained unpaid, is no reason for refusing to consider — adduced by him, and such refusal is an error of law and a subject for special appeal.—18 W. R. 53.

83. So also the ignoring of an entry in a day-book on which the first Court decided the case, is an error of law and a subject for special appeal.—*Ib.*

84. The same rule which holds that the deposition of the serving peon on oath is —, also holds that the report of the Nazir not being upon oath or on anything on which perjury can be charged, is not —.—18 W. R. 197.

85. An *ex-parte* decree is — against the defendant.—19 W. R. 213. *See also* 24 W. R. 254.

It is also admissible in — *quantum valeat* even against a person who was no party to it.—24 W. R. 431.

But if no issues of fact are raised beyond the general issue involved in the claim, the decree, considered as —, is only — that the amount decreed was at the time due from the defendant to the plaintiff.—23 W. R. 149.

86. Proceedings under Act IV of 1840, to which both

EVIDENCE (*continued*).

litigants have been parties, may be treated as — between them on the point of possession.—20 W. R. 420.

87. Where a party asks others to verify his signature to a petition or to identify him as one of the petitioners, it is tantamount to an allegation on his part that he made the statements which appear in the petition, and is as effective — against the party making the request as if the petition were in fact filed.—21 W. R. 34.

88. The High Court declined on appeal to receive — which was available at the trial below, when the prisoner deliberately elected not to give — in reply to the case made against him.—21 W. R., Cr., 13.

89. The proceedings in a suit in which a former holder of the tenure of the person who was said to have created an *itmamee* right was a party, come within the meaning of "any transaction" in s. 13 Act I of 1872, and are admissible as — in a suit to establish the *itmamee* right. —22 W. R. 365. *See also* 24 W. R. 470.

The right mentioned in that section is not a public right only.—23 W. R. 311.

90. A finding in a former suit in which the question was tried between all the parties to the present suit, was held to be admissible as — in this suit under the same section, although the plaintiffs and defendants in the present suit were in form co-defendants in the former.—22 W. R. 456.

91. Where a suit was disposed of according to a compromise, of which the judgment set out the terms in the form of a recital,—*Held* that the judgment, though not in the ordinary form of a decree, was the record of a transaction by which the rights of the parties were recognised, and was therefore relevant as — under s. 13 Act I of 1872.—23 W. R. 162.

And that record is a public document and may be proved by an office copy.—25 W. R. 68.

92. Under s. 13 Act I of 1872, road-cess papers and a deed of sale are — *quantum valeat*.—23 W. R. 293.

93. Information not taken on solemn affirmation is not —.—25 W. R. 152.

94. The Lower Appellate Court was held not wrong in rejecting a decree in a suit brought by a third party against the present plaintiff in respect of the very lands in dispute.—25 W. R. 458 (reversing *ib.* 180).

95. S. 167 Act I of 1872 applies to criminal as well as civil cases; and the Court mentioned in it to decide upon the sufficiency of the — to support a conviction is the Court of Review and not the Court below.—(O. J.) 25 W. R., Cr., 36.

See Abatement 4, 24.
Account 2, 5, 6.
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Evidence (Medical).
,, (Presumptions) 9.
Family Custom 1, 2, 3.
False Evidence.
Forgery 25, 26.
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Ghatwals 19.
Gift 27.
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Hindoo Law (Adoption) 6, 12, 18, 19, 58.
,, ,, (Coparcenary) 61.
,, ,, (Sale) 10.
,, Widow 3.
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Marriage 8, 19.
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Mercantile Usage 1.
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Murder 2, 18, 19.
Nazir 1.
Oath or Affirmation 2, 5.
Partition 25.
Partnership 3, 8.
Possession 1, 2, 4, 12, 14, 15, 16, 18, 21, 24.
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Pleader 2.
Practice (Amendment) 29.
,, (Appeal) 15, 17, 27, 31, 81, 48, 63, 65, 79, 82, 85, 87.
,, (Commissions) 3, 27, 30.
,, (Criminal Trials) 1*a*, 9, 10, 11, 12, 13, 14, 16, 17, 23, 49, 50, 65.
,, (Execution of Decree) 158.
,, (Parties) 30.
,, (Possession) 9, 40.
,, (Review) 3, 4, 25, 56, 79, 89, 97, 106.
,, (Suit) 12, 15, 22, 29, 30, 40, 51, 52, 54, 55, 56, 60, 62.
Pre-emption 84, 85.

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See Principal and Agent 7, 8, 17, 18.
Privy Council 14, 50, 74.
Punishment 7.
Purdah Women 1, 2, 3.
Putnee Talook 40.
Registration 4, 10, 26, 47, 48, 104, 110.
Remand 5, 6, 7, 10, 23, 25, 29, 31, 32, 35, 38, 40, 44, 46, 51, 53, 54, 57.
Rent 102.
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Security 18.
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,, Trial 6, 8.
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Transferable Tenure 7.
Trees 1.
Under Tenures 7.
Vendor and Purchaser 3.
Waiver 1.
Will 62, 64.
Witness.
Written Statement 11.

Evidence (Admissions and Statements).

1. Admissions of a former owner of immoveable property made after he has ceased to have any interest, are not evidence against the party in possession.—W. R. F. B. 20 (1 Hay 137, Marshall 75). *See also* 5 W. R. 267.

2. Admission of one ryot is not evidence as against another.—W. R. F. B. 23 (1 Hay 234, Marshall 70).

3. The plaintiffs were held estopped by their admission made in a former suit between the same parties, though the answer containing that admission had been disallowed in that suit.—1 Hay 114 (Marshall 48).

4. In a suit for rent, defendant pleaded payment and filed a number of receipts. Plaintiff having been required to examine them, and acknowledge or deny them, filed a petition admitting all the receipts except three. The Deputy Collector gave a decree disallowing the three receipts, which was reversed by the Judge, and the receipts admitted. *Held* that the Deputy Collector was wrong in rejecting the three receipts without examining plaintiff again, since the petition was no evidence: and that the Judge was wrong in admitting the receipts instead of remitting the case to the Lower Court to try whether they were genuine.—2 Hay 280 (Marshall 277).

5. An averment not traversed is not to be taken as admitted.—(P. C.) 2 W. R., P. C., 19 (P. C. R. 485). *See also* 17 W. R. 171, 18 W. R. 287.

6. The admission by two parties in a suit of the *bona fides* of a mortgage transaction, when such admission was made to defeat a third party, is no estoppel against one of those parties saying, in a suit against the other, that the admission was false and intended as a fraud against the third party.—1 W. R. 156 (*affirmed by P. C.*) 15 W. R., P. C., 14; *and see also ib.* 16, 18 W. R. 485, 20 W. R. 112.

7. Admission of ryot not sufficient evidence of receipt by intervenor of the rent claimed by plaintiff.—1 W. R. 292.

8. The admissions of a donor's executors treated as the admissions of the donor.—1 W. R. 339.

9. A second power of attorney recognizing a first power is not secondary but original evidence by way of admission of the first power.—2 W. R. 44.

10. An admission once made by a party is binding against him for all the purposes of the suit, unless shown to have been erroneously recorded.—2 W. R. (Act X) 1.

11. An admission of possession under an agreement that plaintiff and other shareholders would grant a mourosee pottah which was never granted and under which no rent was ever paid, is not an admission of tenancy to support a suit for rent under Act X of 1859.—2 W. R. (Act X) 45.

12. A defendant impliedly admitting a liability if a fact is proved, must be held liable if that fact is proved.—3 W. R. 28.

13. The admission of a lessor does not bind a lessee in certain cases in which a *bonâ fide* act might have bound.—3 W. R. 143.

14. Admissions by prisoners to the Police are not admissible in evidence.—3 W. R., Cr., 21; 8 W. R., Cr., 13; 9 W. R., Cr., 16; 12 W. R., Cr., 82.

S. 25 Act I of 1872 applies alike to all Police Officers, not excepting the Commissioner or Deputy Commissioner of Police in Calcutta, and is not qualified by s. 26.—(O. J.) 25 W. R., Cr., 36.

15. An admission of crime, when fairly made after due warning, is not inadmissible simply because, at the time it was made, no formal accusation had been made against the party making it.—4 W. R., Cr., 10.

16. The admissions of prisoners in their own statements before the Magistrate ought to be given in evidence at the trial.—1 W. R., Cr., 18; 5 W. R., Cr., 1; 13 W. R., Cr., 42, 69.

Even though retracted before the Judge.—6 W. R., Cr., 81; 8 W. R., Cr., 40.

17. A mere admission by the defendant of plaintiff having purchased a jote is insufficient to prove that he ever was defendant's tenant.—5 W. R. 156.

18. An admission made by a party in another case involving other parties cannot operate as an estoppel in a suit against parties who were not affected by it.—5 W. R 209. *See also* 19 W. R. 299, 25 W. R. 69.

19. How to give weight to confessions of prisoners recorded under s. 149 Act XXV of 1861.—5 W. R., Cr., 6.

So under s. 150.—9 W. R., Cr., 16; 17 W. R. 50.

20. The whole, and not part, of a prisoner's confession must be taken in order to his conviction.—5 W. R., Cr., 70; 8 W. R., Cr., 38; 18 W. R., Cr., 29; 25 W. R., Cr., 15, 23. *But see* 24 W. R., Cr., 80.

21. Where a plaintiff claims land as rent-free, he cannot, on failure to establish that claim, be allowed to vary his claim on the ground of an admission of the proprietor or of the defendant that the land in question was leased to plaintiff's vendors.—6 W. R. 289.

23. The confession of an accused person is evidence only against himself.—6 W. R., Cr., 84; 7 W. R., Cr., 8; 8 W. R., Cr., 35; 13 W. R., Cr., 14. *But see* 13 W. R., Cr., 24.

24. Admissions, etc., by the parties in a former arbitration proceeding may be used as evidence in a subsequent suit.—7 W. R. 249.

25. Previous statements of witnesses on oath are not available as evidence in a subsequent trial.—7 W. R., Cr., 8.

26. A voluntary and genuine confession is legal and sufficient proof of guilt.—7 W. R., Cr., 41.

27. A gains a decree in a suit against B on a *kistbundee* in which B admitted his share of a debt contracted by himself and C; but A cannot recover the balance in a subsequent suit against both B and C, B making no admission in this second suit, and there being no evidence against C.—8 W. R. 448.

28. The admission by a defendant in a suit for enhancement that he is paying (and has for many years paid) a sum of money to the holders of the putnee in plaintiff's possession, without being able to show that it was paid otherwise than as rent, is sufficient to raise the presumption that the parties stand to each other in the relation of landlord and tenant.—8 W. R. 474.

29. The admission by a husband in the presence of others that he had kicked his wife and that she died after receiving the kick, is direct evidence against him.—8 W. R., Cr., 29.

30. A confession made under promise of pardon is no evidence against the prisoner, with reference to s. 203 Act XXV of 1861.—8 W. R., Cr., 53.

EVIDENCE (ADMISSIONS, & STATEMENTS) (*continued*).

31. The admission by defendant in a former suit for contribution, of the relation of landlord and tenant between him and plaintiff, is binding in a subsequent suit for a kubooleut brought by plaintiff.—9 W. R. 162.

32. In a suit to recover property claimed by plaintiffs as *sebaits* lately in possession and wrongfully ousted therefrom, it was held that statements made by the ancestors of plaintiffs and defendants were receivable in evidence.—10 W. R. 89.

33. In a suit for enhancement, plaintiff's admission that defendant had held the tenure for 30 or 32 years at the same rent, is not an admission that the land has been held at that rate from the Permanent Settlement, and he should be allowed to rebut the presumption arising from the admission.—10 W. R. 427.

34. The confessions of a prisoner in one case in which he was convicted cannot be used against him in another case, unless deposed to on oath either by the person who took them down or by some one else who heard them.—10 W. R., Cr., 56.

35. A party using the statement of another against him must put the whole statement in evidence, but the Judge is not bound to believe it all.—11 W. R. 525. *See* 12 W. R. 317, 22 W. R. 519.

36. A statement or admission made by a party is not *ipso facto* conclusive evidence against him.—12 W. R. 156, 18 W. R. 347.

37. A confession made to a private individual may be evidence against the prisoner if proved by the person before whom the confession was made.—13 W. R., Cr., 69.

38. The admission by a surviving daughter of a member of a joint Hindoo family that the children of her deceased sister have a title to her father's share, is evidence of the existence of the title before the suit.—14 W. R. 484.

39. A plaintiff abandoning his own case and falling back on the admissions of the defendant, must take them as they stand and in their entirety.—15 W. R. 451.

40. A defendant's admission in a deposition in a former suit cannot be binding on him unless he is examined and given an opportunity of explaining it.—16 W. R. 220.

41. Unless a defendant has subjected himself to cross-examination, no statement which he may volunteer can be used as any evidence in his own case.—16 W. R. 257.

42. An allegation made by defendant in a former suit, having been put in evidence by plaintiff in the present suit, was held to be sufficient proof of the thing alleged.—17 W. R. 372.

43. A statement made by a party on oath before the Income Tax officer, as to the extent of his property liable to be taxed, is admissible in evidence.—17 W. R. 391.

44. Statements made before a Police Inspector are not evidence and cannot be used as evidence in the trial.—17 W. R., Cr., 5.

45. The Court declined to regard a statement by defendant's pleader that L was the previous tenant and held the land after her son, as an admission of continuous hereditary holding as of right on the part of plaintiffs, on whom lay the *onus* of proving such holding.—18 W. R. 60.

46. An admission by defendant's ancestor is evidence on which a Court may or may not act according as it considers it ought to have effect given to it.—18 W. R. 347.

47. Where a defendant seeks to use statements put in as evidence and treat them as admissions by the plaintiff who put them in, the plaintiff may show the real nature of the transaction and get rid of the effect of the apparent admissions.—18 W. R. 485.

48. How to construe s. 30 Act I of 1872 with regard to the admissibility in evidence of the confession of one prisoner against another.—19 W. R., Cr., 16, 57, 67; 21 W. R., Cr., 65, 69; 23 W. R., Cr.. 24; 24 W. R., Cr., 42; 25 W. R., Cr., 8, 43.

49. A statement made by defendant in a former suit may be used as an admission within the meaning of s. 18 Act I of 1872.—22 W. R. 303.

50. S. 122 Act X of 1872, which requires a Magistrate to certify on a confession his belief that it was voluntarily made, does not apply to the case of a confession taken by a Magistrate who is actually investigating the case and examining the witnesses preparatory to commitment; but to a case where some other Magistrate takes a confession and forwards it to the Magistrate by whom the case is enquired into or tried. S. 346 governs such a case as the former.—23 W. R., Cr., 16. *See also* 24 W. R., Cr., 42.

51. The meaning of cl. 8 s. 32 Act I of 1872 is that, when a number of persons assemble together to give vent to one common statement which expresses the feelings or impressions made in their minds at the time of making it, that statement may be repeated by the witnesses and is evidence; but not that a Police Officer may go round, collect a great number of statements from persons in different places, and afterwards put those statements in second-hand before the Court as evidence.—23 W. R., Cr., 35.

52. Statements recorded in a rent-suit under Act X of 1859, which do not conform to the requirements of s. 60, cannot be relied on as admissions.—24 W. R. 114.

53. A confession not recorded in accordance with s. 346 Act X of 1872 is inadmissible.—24 W. R., Cr., 29. *See also* 24 W. R., Cr., 43.

54. A statement which a man in the custody of the Police volunteers to one in the position of a Magistrate can be used as evidence against the man who makes it.—24 W. R., Cr., 33.

55. With reference to ss. 26 and 27 Act I of 1872, when a fact is discovered in consequence of information received from one of several persons charged with an offence, and when others give like information, the fact should not be treated as discovered from the information of them all. It should be deposed that a particular fact has been discovered from the information of A B, and this will let in, under s. 27, so much of the information as relates distinctly to the fact thereby discovered. —24 W. R., Cr., 36.

See Administration 1.
Attorney and Client 7, 8, 14, 15.
Auction-Purchaser (Execution Sale) 22.
Bond 25.
Compromise 8, 15.
Conviction 11.
Costs 80.
Defamation 14.
Divorce 10.
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Evidence 10, 16.
,, (Corroborative) 5.
,, (Documentary) 124, 128.
,, (Estoppel) 15, 24, 37, 48, 53, 76, 90, 97, 115, 116, 117, 118, 119.
Ghatwals 33.
Hindoo Law (Coparcenary) 41.
,, Widow 49.
Income Tax 5.
Jury 12.
Limitation (Act XIV of 1859) 172, 291.
,, (Reg. III of 1793 s. 14) 10.
Mesne Profits 69.
Minor 42.
Mortgage 21.
Pleader 2.
Principal and Agent 9.
Registration 98.
Rent 26, 43, 47, 62, 96, 98.
Rioting 10.
Sale Law (Act XI of 1859) 32.
Stamp Duty 76.
Witness 82.
Written Statement 12.

Evidence (Corroborative).

1. Under s. 28 Act II of 1855 (which applies not only to the Supreme Courts but to all the Courts in India), the uncorroborated evidence of a single witness is not legally sufficient for a conviction of perjury.—(F. B.) 5 W. R., Cr., 23. *See* 5 W. R., Cr., 11, 77; 9 W. R., Cr., 66. *But see* 14 W. R., Cr., 53.

2. A conviction founded upon the uncorroborated evidence

EVIDENCE (CORROBORATIVE) (*continued*).

of one or more accomplices alone is valid in law; but the evidence of accomplices should not be left to a jury without such directions and observations from the Judge as the circumstances of the case may require.—(F. B.) 5 W. R., Cr., 80. *See* 3 W. R., Cr., 8 (4 R. J. P. J. 424); 5 W. R., Cr., 11, 18, 59; 6 W. R., Cr., 44, 92; 8 W. R., Cr., 19; 9 W. R., Cr., 51; 10 W. R., Cr., 17, 63; 11 W. R., Cr., 21; 12 W. R., Cr., 5; 15 W. R., Cr., 37; 19 W. R., Cr., 57.

3. Comparison of signatures is one kind of corroboration which would justify a conviction on the testimony of a single witness in a case of false evidence.—5 W. R., Cr., 98.

4. A prisoner may be convicted on his own uncorroborated confession.—6 W. R., Cr., 73.

And notwithstanding a subsequent denial before the Sessions Court.—12 W. R., Cr., 49.

5. Statements made otherwise than before the Courts and officers specified in s. 31 Act II of 1855 may be given in corroboration of testimony, but must be *proved* by the person who received them or by some one who heard them given.—7 W. R., Cr., 31; 12 W. R., Cr., 3.

So statements made to Police Officers.—11 W. R., Cr., 25.

6. Corroboration as to the details of the crime, without corroboration as to the person of the accused, is worthless. —13 W. R., Cr., 11.

7. Under s. 154 Act XXV of 1861 Police diaries cannot be admitted as —.—13 W. R., Cr., 22.

8. There is no rule of law which prevents the admission without corroboration of the evidence of a witness who says he committed breaches of the law with the accused, if the witness is not open to the same charge as the accused.—13 W. R., Cr., 21.

9. Where proceedings under Act XL of 1858 and Act XXVII of 1860 were held to be —.—18 W. R. 514.

10. Explanation of the corroboration needed to make the testimony of an approver trustworthy.—19 W. R., Cr., 16.

11. Although under s. 133 Act I of 1872 the conviction of a prisoner on the uncorroborated evidence of an accomplice is not illegal, the Court, having reference to Illustration *b* s. 114, considered in this case that the accomplice was unworthy of credit. 19 W. R., Cr., 43, 48, 68; 20 W. R., Cr., 19; 21 W. R., Cr., 69; 24 W. R., Cr., 55.

Tainted evidence is not made better by being corroborated by other tainted evidence.—25 W. R., Cr., 13.

See Ameen 7.
Conviction 11.
Evidence 28.
,, (Documentary) 4, 42, 45, 47, 56, 84.
,, (Oral) 47.
Hindoo Law (Coparcenary) 61.
Insanity 4.
Land 7.
Purdah Women 2.

Evidence (Documentary).

1. Of fixed holding under Reg. VIII of 1793.—W. R. F. B. 94.

2. Of old deeds of adoption.—W. R. F. B. 106.

3. Erasure or alteration in document relied on by plaintiff to be accounted for.—S. C. C. 69.

4. The books of a creditor are not admissible as evidence against his debtor to prove the debt, unless there is other evidence of the debt; in which case entries in such books may be admitted as corroborative evidence under s. 43 Act II of 1855.—1 Hay 569 (Marshall 219).

5. After an appeal was filed, the decree was destroyed by fire during the Mutiny. *Held* that a copy in the possession of the appellant might be received upon evidence given of its authenticity.—1 Hay 584 (Marshall 213).

6. A party relying upon certain documents is bound under ss. 39 and 128 Act VIII of 1859, to produce them, and secondary evidence of their contents is not admissible without a legal excuse for their non-production.—2 Hay 70, 390; 21 W. R. 262.

7. Admissibility of a copy of a deed of purchase.—W. R. Sp. 5.

8. Under s. 39 Act VIII of 1859, the Government Gazette containing the advertisement of sale, and a printed paper issued from the Master's Office, and purporting to be the conditions, are admissible as — of the actual conditions of the deed of sale.—W. R. Sp. 50.

9. The identity of a deed of permission to adopt is sufficiently established by a reference to it in a subsequent proved deed.—W. R. Sp. 210.

10. According to s. 39 Act VIII of 1859, documents not filed with the plaint (*e.g.* a pottah) may be received as evidence from the plaintiff. The pottah being on plain paper does not render it invalid.—W. R. Sp. 271.

11. One Court is not bound to receive a map which has been acted on by another Court as genuine and correct.—W. R. Sp. 323.

12. Act VIII of 1859 gives a discretionary power to a Court to receive documents after filing of plaint.—W. R. Sp. (Act X) 67.

Or after the day fixed for the hearing.—15 W. R. 150.

13. Copies of Income Tax Returns were refused to be received in evidence.—W. R. Sp. (Act X) 105.

14. One party, by merely producing his own account-books, cannot bind the other.—(P. C.) 5 W. R., P. C., 29 (P. C. R. 50).

15. Alterations in an instrument must be proved to have been made antecedent to the signature before the instrument is admissible in evidence.—(P. C.) 5 W. R., P. C., 53 (P. C. R. 71).

16. The mere production of banker's books is not sufficient evidence to establish a debt; there must be some acknowledgment by the debtor of the correctness of the books, or some recognition by him to render those books binding evidence against him.—P. C. R. 245.

16*a*. Where documents are produced and are not disputed, they are receivable in evidence without proof.—(P. C.) 4 W. R., P. C., 87 (P. C. R. 259); 15 W. R. 8.

17. A copy of a document coming out of a Public Office, and certified by the officer in charge of that department to be a true copy, is admissible in evidence.—(P. C.) 4 W. R., P. C., 121 (P. C. R. 300); 1 W. R., P. C., 30 (P. C. R. 460). *See also* 7 W. R. 11. 15 W. R. 102.

18. The laxity with which — was received in India.—(P. C.) 4 W. R., P. C., 128 (P. C. R. 307); (P. C.) 17 W. R. 552.

19. Maps drawn for one purpose are not admissible in evidence in a suit for another purpose.—(P. C.) 2 W. R., P. C., 28 (P. C. R. 546).

20. Necessary to establish the existence of an old shikmee talook.—(P. C.) 3 W. R., P. C., 5 (P. C. R. 563).

21. The discretionary power vested in the Court with reference to the reception of documents, will be largely exercised in the case of *bonâ fide* applications.—1 Hyde 145.

22. It is incumbent on the Judge to look at the plaintiff's documents, when they have been accepted by, and formed the basis of the decree of, the Court below. He should not reject them merely because they had not been filed with the plaint.—1 W. R. 12. *See also* 25 W. R. 26.

23. Pottahs, kubooleuts, and *jumma-wasil-bakee* papers when receivable as —.—1 W. R. 49; 5 W. R. 242 (Act X), 83; 11 W. R. 165: 17 W. R. 346.

Attested or authenticated copies of the same to be proved by best evidence.—8 W. R. 488, 9 W. R. 248, 10 W. R. 73.

24. Secondary — when alone admissible.—1 W. R. 144; 7 W. R. 533; 9 W. R. 248, 517; 10 W. R. 24, 267; 11 W. R. 228, 396; 15 W. R. 228; (P. C.) 17 W. R. 285; 21 W. R. 262; 22 W. R. 303; (P. C.) 23 W. R. 208; 25 W. R. 177.

25. Admission of — after first hearing.—1 W. R. 198.

26. A copy of a record-keeper's report is not —; nor also a copy of a Magistrate's proceeding in a suit regarding other property covered by the deed in dispute.—1 W. R. 339.

27. Plaintiff filing copies of documents is bound to explain why originals have not been filed.—2 W. R. 80, 10 W. R. 338.

28. A document found to have been subsequently added to, yet in some degree accepted as genuine, is admissible in evidence.—2 W. R. 231.

29. Authenticated copies of documents, of which the originals are filed in another suit, are admissible in evidence when not objected to by the other side.—2 W. R. 237. *See* 10 W. R. 338.

30. Canoongoe papers and proceedings of settlement officers are good evidence in questions of pergunnah rates, standards of measurement, and the like.—2 W. R. (Act X) 13 (4 R. J. P. J. 46).

EVIDENCE (DOCUMENTARY) (*continued*).

31. A moonsiff's report of a local investigation is entitled to the greatest weight as —.—3 W. R. 219.

32. Should not be summarily rejected for want of legal proof, unless the party producing it understands the nature of the proof required, and has had an opportunity of producing it.—3 W. R. (Act X) 169.

33. Chowkeedar's receipt.—*See* Sale 54.

34. Nazir's return.—*See* Nazir 1, 3, 5 ; Sale 51 ; Service 2.

35. Measurement papers of a zemindaree, made for the purpose of a partition, are admissible as evidence of title as showing what the zemindaree consisted of, though the partition may not have been carried out.—4 W. R. 26.

36. Rules as to the mode of proving the authenticity of *dakhilas* and *Canoongoe* papers.—4. W. R. (Act X) 41 ; 5 W. R. (Act X) 11, 53 ; 6 W. R. (Act X) 83 ; 7 W. R. 15, 91, 105, 533 ; 8 W. R. 517 ; 10 W. R. 107, 490 ; 11 W. R. 105, 170 ; 12 W. R. 30, 34 ; 17 W. R. 346. *See* 45 *post*.

37. A copy of an alleged deed of partition, set up to defeat an ordinary rule of Hindoo law with regard to succession, and taken from the record of a miscellaneous proceeding without any suggestion as to what has become of the original, was held not admissible.—5 W. R. 21.

38. A Civil Court is not bound to adopt a Magistrate's view as to the genuineness or otherwise of a document.—5 W. R. 26. *See* Evidence (Estoppel) 2.

39. A copy of a deposition of a person who is alive, if filed in the Lower Court and not objected to there, may be used in the Appellate Court.—5 W. R. 43.

40. A Civil Court is not bound to admit or reject documents because they have been admitted or rejected by a Revenue Court. -5 W. R. 185.

41. The mere production of a pottah without proof of possession under it, cannot avail.—5 W. R. 213.

42. Account books are legal evidence to corroborate oral testimony.—5 W. R. (Act X) 31. 13 W. R. 291. *See also* (P. C.) 23 W. R. 390.

43. Report of Police Officer. -*See* Evidence 37, 58, 77, 79.

44. Rule as to old documents.— 1 W. R., P. C., 73 ; 6 W. R. 82 ; 10 W. R. 1, 237 ; 11 W. R., P. C., 35 ; 12 W. R. 90, 197, 472 ; 13 W. R. 109 ; 17 W. R. 279, 316 ; 18 W. R. 314, 489 ; 21 W. R. 19 ; (P. C.) *Ib.* 22, 130. 279 ; 21 W. R. 128. *See* 2 *ante*.

Also under s. 90 Act 1 of 1872.—21 W. R. 45.

45. A ryot who puts in *dakhilas* to support his case must prove them ; their admission as genuine is not to be legally presumed merely because they are not formally disputed by the landlord.—(F. B.) 7 W. R. 526 : 8 W. R. 488 : 9 W. R. 117, 211 ; 12 W. R. 267 ; 14 W. R. 211 ; 20 W. R. 261. *But see* 12 W. R. 350.

46. Ss. 128, 129, and 130 Act VIII must be read together, and documents produced under s. 128 become thereby exhibits.—8 W. R. 91.

47. *Jumma-wasil-baker* (and *nikassee*) papers are, by s. 13 Act II of 1855, admissible only as corroborative evidence, and cannot rebut the presumption under s. 4 Act X.—8 W. R. 280, 464 ; 10 W. R. 291 ; 11 W. R. 165. *But see* 8 W. R. 328, 10 W. R. 193.

S. 34 Act 1 of 1872 has made an alteration in the law as laid down by s. 13 Act II of 1855.—22 W. R. 549.

48. The report of a sheristadar is not, under s. 180 Act VIII and in view of the fact that there was a commissioner attached to the Court, legal evidence.—8 W. R. 331. *See also* 12 W. R. 209.

49. A signature of a Rajah of the ancient Nuddea family was held to be valid although it did not contain the name of any particular individual.—8 W. R. 395.

50. The production of a document in an adversary's presence is of great legal importance in determining its genuineness.—*Ib.*

51. The proceedings of a Settlement Ameen cannot be taken as evidence against a person who was not a party to those proceedings.—8 W. R. 426. 22 W. R. 455.

52. A copy of a document purporting to be the copy of an original *kubala* may be received as evidence if the accuracy of the first copy, and the execution and loss of the original, are proved.—8 W. R. 438. *See also* 11 W. R. 396, 15 W. R. 102, 22 W. R. 303. *See* 22 W. R. 355.

53. Collectorate *challans*.—*See* Receipt 1, 2, 3. 5.

54. A *hustabood* filed under Reg. VIII of 1800 is no evidence against third parties.—9 W. R. 105.

55. *Issumnovisee* papers.—*See* Issumnovisee.

56. Settlement papers are simply corroborative evidence.—9 W. R. 239. *But see* 17 W. R. 273, 24 W. R. 279.

57. Effect of receiving documents which are not legal evidence.—9 W. R. 274.

58. Where the accounts of a mortgagee in possession are being taken, his income tax papers are inadmissible as evidence in his favor, though they may be used against him.—9 W. R. 275.

59. Under s. 128 Act VIII, the parties are not, as of right, entitled to adduce fresh — after the issues in the case are settled ; but they may tender such evidence, stating the grounds upon which it was not tendered at an earlier stage of the case ; and the Judge, if he receives it, should state the grounds of his doing so.—9 W. R. 291.

What is meant by the words "the first hearing of the suit" in s. 128. is clearly defined by s. 139.—21 W. R. 42.

The main object of s. 128 explained.—23 W. R. 29, 361.

60. *Jummabundee*, like books of accounts, can never be treated as independent evidence of any contested fact.—9 W. R. 451. *See also* 81 *post* and 17 W. R. 298 ; 20 W. R. 112, 471. *But see* 13 W. R. 346.

61. Secondary evidence (documentary or oral) is admissible as to the contents of a deed which the Court is satisfied was executed and has been lost or destroyed.—10 W. R. 21.

62. Documents put in by neither of the parties to a suit cannot be used as evidence between them except for the purpose of cross-examination of witnesses.—10 W. R. 92.

63. Under s. 128 Act VIII, it is not necessary for parties in a suit to file — unless it be called for by the Court.—10 W. R. 179.

64. Butwarra papers are only evidence of the proportionate assessment payable by proprietors after partition ; but not evidence binding ryots as to what holdings are theirs, or what their areas, rates, or periods of occupancy.—10 W. R. 197.

65. The reason for the non-production of — must be proved, and not accepted on the oral statement of a pleader.—10 W. R. 237.

66. Copies, and not translations, must be tendered where parties wish to put in evidence judgments delivered in English ; but there is no law which declares that Bengalee copies of formal decrees of a Zillah Court are inadmissible.—10 W. R. 239.

67. When a document is tendered in evidence, the Court has no right, without distinctly deciding whether it is or is not proved to be genuine, to decline to receive it merely because it may possibly or probably be a forgery.—10 W. R. 256, 15 W. R., P. C., 12.

68. The best evidence in support of a deed is the witnesses to its execution or its custody ; it is not necessary to support it by —.—10 W. R. 261.

69. Under s. 13 Act II of 1855 Government Survey Maps are — as to the physical features of a country and the other circumstances which the officers making them are specially commissioned to note down. - 10 W. R. 300. *See also* 24 W R. 317.

70 A map is not evidence of title, but only of possession.—10 W. R. 338. *But see* 10 W. R. 343.

71. When the testimony of subscribing witnesses to — may be dispensed with.—10 W. R. 340, 13 W. R. 191, 21 W. R. 429, 23 W. R. 293.

72. Government *chittahs* of Nowabad Mehals in Chittagong are admissible as evidence, under s. 58 Act II of 1855.—10 W. R. 340.

73. *Chittahs* produced as evidence of land being *mal* are sufficiently attested by the depositions of the village gomashta.—10 W. R. 443.

As to legal effect of *chittahs* put in as evidence.—12 W. R. 39, 13 W. R. 56, 19 W. R. 309, 24 W. R. 410.

74. Object of s. 129 Act VIII explained relative to the production and inspection of exhibits.—11 W. R. 350.

75. The writer of a document, if alive, need not be called as a witness if there is other satisfactory evidence of its execution.—12 W. R. 30. *See also* 21 W. R. 129.

76. Witnesses simply attesting their own signatures do not legally establish the identity of a bond.—12 W. R. 529.

77. The admission of — subsequently to the filing of the plaint is not a ground of appeal against the ultimate determination of the Court which admitted such evidence, when it is received under s. 39 Act VIII with the sanction of the Court.—(P. C.) 12 W. R., P. C., 32.

EVIDENCE (DOCUMENTARY) (*continued*).

78. Where two firms entered into a joint adventure to be conducted by an agent specially appointed by both firms, and one of the firms brought a suit against the other to recover their share of the alleged loss upon the joint adventure.—*Held* that books of accounts kept by the plaintiffs themselves and two corresponding branches of their firm, and adduced by the plaintiffs in support of their claim, were not like books of a partnership to which all the partners in a firm have access and which are kept by the servants of all; and that, although the books corroborated each other, they were not sufficient to entitle the plaintiffs to a decree, in the absence of evidence showing that the sums mentioned in the books as paid to the agent were really applied by him to the purposes of the joint adventure. —(P. C.) 13 W. R., P. C., 36.

79. The report of a *mouzadar* is not legal evidence under s. 180 Act VIII.—13 W. R. 113.

80. Report of *Omedwar*.—*See* Practice (Commissions) 24.

81. To prove legally the execution of a document of which only a copy is on the record, the witness must not only depose that he executed a document of that nature, but the purport of the copy must be read to him, and he must be asked whether the original of the same was what he executed.—13 W. R. 429.

82. Report of Ameen.—*See* Ameen 1, 2, 3, 4, 5, 7, 8, 9, 11, 14, 16, 18, 20, 21, 22, 28.

83. Where a decree is put in evidence, it is not open to the Judge to take into consideration its merits or the evidence on which it was founded.—14 W. R. 391.

84. *Jummabundee* papers can only be used as corroborative evidence.—14 W. R. 474. *See also* 20 W. R. 142. *See* 60 *ante*.

85. Where records from a Government Office are required, it is for the Court to send for them.—15 W. R. 150.

86. But papers required from a Court of Wards, which is not a Government Office, must be obtained by the party who needs them by means of a summons on the proper officer.—*Ib.*

87. A Cazee's book is not strictly an official record within the meaning of s. 355 Act VIII.—15 W. R. 173.

88. A map is not admissible in evidence unless it is stamped.—15 W. R. 180.

89. Measurement papers are inadmissible in law without proof of the circumstances under which they were prepared.—15 W. R. 218.

90. Collectorate peon's return.—*See* Service 2.

91. Report of *Mohurir* under s. 180 Act VIII.—*See* Practice (Commissions) 29.

92. Documents not evidence between the parties should be rejected at once; if admissible but requiring proof, they should be admitted only subject to proof.—15 W. R. 490.

Though undesirable in all cases to apply strict and technical rules to the admissibility of —, yet the substantial principles on which the authenticity and value of all evidence rests, should be observed.—(P. C.) 17 W. R. 551. *See also* 25 W. R. 554.

93. The fact of a pottah coming from proper custody, corroborated by the exact identity of the grantor's signature on other documents, was, in the absence of attesting witnesses, held proof of its genuineness.—15 W. R. 493.

94. In the case of an offence under s. 121 Penal Code, the *Calcutta Gazette* and the *Gazette of India* were held admissible in evidence under s. 8 Act II of 1855, and a printed official letter from the Secretary to the Government of the Punjab under s. 6 of the same Act.—15 W. R., Cr., 25.

95. S. 200 Act XXV of 1861 relates to oral evidence and not to —.—*Ib.*

96. The *ex-parte* deposition of a witness who might have been called and cross-examined at the trial, ought not to have any weight given to it.—(P. C.) 16 W. R., P. C., 11.

97. Copies should not be summarily excluded from evidence merely because they are not originals, when no objection is taken to them.—17 W. R. 378, 18 W. R. 346.

98. The report of a *Mohafiz Duftur* or record-keeper is not admissible in evidence without his examination on oath as to the correctness of it.—17 W. R. 400.

99. A Judge disbelieving the oral evidence of certain witnesses, is not bound to take into consideration — sworn to by the same witnesses.—18 W. R. 60.

100. An attested copy of a petition was admitted as evidence where the original was with the record of another case and application had been made to the Court to send for such record.—19 W. R. 85.

101. The admission in appeal of a pottah on the *ipse dixit* of the defendant after his vakeel had deposed on oath in the first Court that defendant had no documents whatever, was a substantial error in law; and even if the Appellate Court had a right to receive it, it was wrong in deciding the case on it without evidence of its genuineness. —19 W. R. 88.

102. Under the rules of the High Court, account books which are not translated, and are not therefore a part of the paper-book, cannot be referred to in a trial, without special leave.—19 W. R. 121.

103. *Chittahs* and maps made in contemplation of resumption proceedings in the presence of both sides and signed by the parties are legal evidence.—19 W. R. 303.

104. Secondary evidence may be received of a lost deed shown to have been unstamped, on payment of the penalty that would have to be paid if the deed itself were produced. The admission of such secondary evidence without payment of the penalty is no ground for special appeal.—20 W. R. 63.

105. Regarding the reception of — under ss. 89 and 132 Act VIII.—(P. C.) 20 W. R. 95.

106. What is necessary to support the contention that the judgment of a Lower Appellate Court is erroneous in law because the judge has failed to give proper effect to the —.—20 W. R. 197.

107. The Lower Appellate Court was held to have done wrong in rejecting as inadmissible, because on plain paper and unattested, sunnuds which had been filed in a previous suit between the same parties, and the authenticity of which had then been established, and had never since been impeached; as also in rejecting receipts which had been similarly filed before and had not been impugned.—20 W. R. 304.

108. Where a copy of the deposition of a living witness was improperly admitted, such improper admission was held, under s. 167 Act I of 1872, to be no ground of itself for a new trial or reversal of decision.—20 W. R. 384.

109. A *thakbust* map, to which the defendant was not a party, is not admissible as evidence on behalf of the plaintiff.—20 W. R. 458.

110. Where certain ryots swore that they got their pottahs from the hands of the person who professed to sign them, this was held under s. 73 Act I of 1872 as "proving to the satisfaction of the Court" that the signatures were those of the lessor.—21 W. R. 6.

111. Butwarra *chittahs* are no evidence in a suit for possession of a jote and to set aside a summary award under s. 15 Act XIV of 1859.—21 W. R. 29.

112. Ss. 128, 129, and 132 Act VIII do not make every document which is admitted under them good evidence in the suit, but the Court should sort the documents tendered into two classes, those relevant and admissible, and those irrelevant and inadmissible.—21 W. R. 76.

113. Where *dakhilas* are ordered to be given up in accordance with s. 132 Act VIII, the Court is bound to fix a time within which they should be given up.—21 W. R. 112.

114. Under what circumstances a Collectorate map was held admissible in evidence.—21 W. R. 115.

115. The absence of an original deposition from a record must be satisfactorily accounted for before a copy can be looked at; and such copy should be proved to be a correct copy before it can be used.—21 W. R. 257.

116. The fact that a pottah on which a plaintiff's title is based has not been registered, and cannot therefore be used by reason of the Registration law, is not a good ground on which a Court would be justified in admitting secondary evidence.—21 W. R. 307.

117. A *lotbundee* cannot be accepted as secondary evidence in lieu of the certificate of sale, unless the absence of the certificate is accounted for, and no better evidence than the *lotbundee* can be produced.—21 W. R. 333.

118. Road-cess return.—*See* Road-cess 1.

119. Petitions should not be used as evidence where they are but statements made by a person who is alive and who may be called as a witness.—22 W. R. 213.

120. The report of a Special Commissioner was held to be inadmissible as evidence.—22 W. R. 231.

121. It is entirely a matter of discretion to a Court in

EVIDENCE (DOCUMENTARY) (*continued*).

rejecting a copy to allow the party an opportunity of filing the original.—22 W. R. 355.

122. A *kubala* is not a public document of which a copy is admissible under ss. 76 and 77 Act I of 1872.—*Ib.*

123. Letters between district authorities are public documents, and as such admissible as evidence under s. 74 Act I of 1872.—23 W. R. 272.

124. A letter containing an admission does not require a stamp before it can be admitted as evidence.—23 W. R. 325.

125. In a suit to recover moneys unaccounted for, where defendants plead payments endorsed on documents, and the endorsements purport to have been signed by the plaintiffs, the formal and regular method of proof is to call on plaintiffs to admit or deny their signatures, and then to call upon witnesses to state whether they saw plaintiffs sign, or could speak to the handwriting, or generally what took place.—(P. C.) 23 W. R. 390.

126. With reference to s. 34 Act I of 1872, factory books cannot be used as independent primary evidence of the payment to which the entries refer.—23 W. R., Cr., 27.

127. A map which had been registered as part and parcel of a bill of sale, and was part of plaintiff's title-deed, is admissible as evidence.—24 W. R. 188.

128. A statement made before a Collector in a mutation proceeding is admissible as — under s. 90 Act I of 1872.—25 W. R. 134.

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,, (Suit) 7, 13, 19, 24, 50, 53.
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,, Law (Act I of 1845) 2.
Special Appeal 16, 76, 115.
Stamp Duty 9, 10, 41, 47, 60, 77, 82, 83, 89.
Survey 7, 8, 11, 12, 15, 17, 18, 22, 24, 26, 27, 28, 30, 31, 32, 33.
Timber 8.
Title 1.

Evidence (Estoppel).

1. A suit for rent upon a kubooleut pronounced spurious is no estoppel against a suit to set aside a pottah of earlier date not in issue in the former suit.—W. R. F. B. 10 (1 Hay 75, Marshall 43). *See* 44 *post.*

2. Magistrate's proceedings under Act IV of 1840 are not necessarily conclusive in a suit for possession by the unsuccessful party.—1 Hay 7.

3. A decree for the rents of 1258 to 1261 may be evidence of greater or less weight in determining, but cannot be pleaded as *res judicata*, and therefore as an estoppel to, the claim for the rents of 1262 to 1265.—1 Hay 31 (Marshall 12).

So also past payments of rent do not estop the tenant from disputing the landlord's right to future rent.—20 W. R. 347.

4. A former judgment, in which a certain document has been held to be genuine between a third person as plaintiff, and the present plaintiff and the present principal defendant as defendants, though not a *res judicata* under s. 2 Act VIII of 1859, is conclusive in the present suit on the point of authenticity of that document.—1 Hay 130. *See* 11 W. R. 309.

4*a*. An order passed in execution of a decree is not a decision which, under s. 2 Act VIII, bars a regular suit.—1 Hay 515.

5. A party cannot set up the fraud of the ancestor through whom he claims.—1 Hay 528, 1 W. R. 37, 13 W. R. 87. *But see* 46 *post* and 19 W. R. 238.

6. A deed may be pleaded in a suit for mesne profits without regard to any opinion incidentally pronounced regarding it in the summary order passed by the Court executing the decree for possession.—2 Hay 156.

7. A executed a deed of sale in favor of B, which was duly registered; and B afterwards mortgaged the house to C. *Held* that A, and those claiming through him, were estopped, as against C, from setting up that the sale of the house to B was a *benamee* transaction, and that A continued notwithstanding to be the true owner.—2 Hay 157 (Marshall 293).

8. In a suit to eject a tenant holding even after the expiration of his lease, it is not competent to the tenant to set up that his landlord, the plaintiff, holds under an invalid lakheraj, and that the zemindar, and not the plaintiff, is entitled to the land.—2 Hay 473 (Marshall 377).

9. A person is not estopped by the negligence of himself or his servants unless the party who sets up the estoppel can show that his position has been altered or that he has sustained injury in consequence.—Sev. 29.

10. Parties who, by false representations, induce others to enter into contracts, are estopped from afterwards falsifying their statements, and, if necessary, may be compelled to make them good.—W. R. Sp. 11, 5 W. R. 289.

11. A party to a suit is not estopped by the reasons given by a Judge for his decision, when the same question has not been formally raised and finally decided.—W. R. Sp. 20. *See* 27 *post.*

12. The failure of a reversioner to put in an answer where his title was not threatened cannot be construed into a consent to an alienation made by a Hindoo widow without legal necessity.—W. R. Sp. 48.

13. Where in a former case plaintiffs allowed property attached as theirs by creditors, to be claimed and taken by defendants, they were not now permitted to make a contrary averment.—W. R. Sp. 58.

14. The effect of verdicts (whether upon parties or privies) must altogether depend on the question whether the same point was actually in issue in the former and present suits.—W. R. Sp. 167.

15. Where, in proceedings under Act XXVII of 1860, a plaintiff called herself the guardian and trustee of her minor adopted son, but the certificate was given to defendant claiming under a will from her husband, the widow is not estopped by her former statement from suing as widow of her husband to call in question the will.—W. R. Sp. 198. *See also* 11 W. R. 127.

16. A plaintiff is not estopped by an evidently false state-

EVIDENCE (ESTOPPEL) (*continued*).

ment in his plaint as to possession; but the Court may look behind the statement and determine upon its truth or otherwise, and affirm or disallow it as may seem right.—W. R. Sp. 282 (L. R. 61).

17. A decision in a former suit cannot operate as an estoppel between co-defendants in that suit or parties claiming under them.—W. R. Sp. 299 (L. R. 81). *See also* 12 W. R. 521. *See* 25 *post*.

18. In a suit for declaration of title, the fact that the Revenue Courts decreed the registration of plaintiff's vendor's name as a joint sharer, and that no steps were taken during 12 years to set aside that decree, cannot operate as an estoppel.—W. R. Sp. 350 (L. R. 126).

19. Plaintiffs were held not estopped from obtaining certain rights now, because they did not urge them when they had no title to them.—W. R. Sp. 365 (L. R. 139).

20. In a suit for a kubooleut and for determination of the rate at which such kubooleut is to be delivered, the ryot is estopped from pleading a pottah which he denied in a former suit for rent.—W. R. Sp. (Act X) 115 (3 R. J. P. J. 105).

21. When a Court of Justice states a fact, that fact is conclusive in the case.- (P.C.) 5 W. R., P. C., 53 (P. C. R. 71). *See also* 10 W. R. 216.

22. Distinction between judgment *in rem* and judgment *inter partes*.—(P. C.) 2 W. R., P. C., 31 (P. C. R. 520).

23. The decree in a suit for enhancement is no estoppel against a suit by the then defendant to recover possession of the land in dispute.—1 W. R. 111. *See* 16 W. R. 85.

24. A plaintiff is not estopped by a statement made by him in a former pleading or suit.—1 W. R. 162, 310. *See also* 8 W. R. 468, 10 W. R. 344.

25. A decision as between co-defendants in a suit in which the title of the plaintiff was only at issue, is not necessarily an estoppel in a subsequent suit to try their title.—1 W. R. 287. *See also* 12 W. R. 521. *See* 17 *ante* and 102 *post*.

26. The registry of transfer of a holding by one ryot to another, when sanctioned by the existing farmer of a Government khas mehal, and not objected to by the Government, was held a complete estoppel against a succeeding farmer.—1 W. R. 351 (3 R. J. P. J. 355).

27. A finding in one suit to which A was a party is no bar against A in another suit, unless it is shown that the issue in question in the latter was raised in the former suit and was a material issue in it.—2 W. R. 78.

28. When an *ekrar* (providing for payment of rent by deduction from larger profits) was not pleaded as a bar to a suit for rent, and a decree was obtained under Act X, the matter cannot be re-opened in a subsequent civil suit.—2 W. R. (Act X) 57.

29. Adoption, legitimacy, and like matters, decided by one Court should not be considered open to question in another, unless the opposing party can prove fraud or collusion.—3 W. R. 14. (*Over-ruled by F. B.*) *See* 7 W. R. 338.

30. A *bonâ fide* purchase of a mokurruree lease from one in whose favor it had been created by a *benamee* transaction, cannot be questioned by an auction-purchaser at a subsequent sale for arrears of revenue.—3 W. R. 87.

31. A judgment of a Court altering a pure legal misapprehension as to rights and *status* between A and B, and passed in a suit to which C was not a party, is not binding on C, nor will it give A a right to bring a fresh suit in order to put him in the position in which he would have been had he never misconceived his correct legal claim.—3 W. R. 113.

32. The fact of no regular suit having been brought to obtain possession of land in reversal of a revenue award within three years of its confirmation is not conclusive evidence of title.—4 W. R. 56.

33. A former judgment which, after deciding the issues both of limitation and right in favor of the plaintiff, nonsuited him, is not conclusive in a subsequent suit as regards limitation.—4 W. R. 104.

34. A Foreign judgment is conclusive as between the parties when it cannot be questioned upon the ground of fraud or want of jurisdiction or that it was unduly obtained.—4 W. R. 107.

35. A decision in a case under Act X is binding on a Civil Court.—4 W. R. (Act X) 40. *But see* 8 W. R. 175.

36. A conviction in a criminal case is not conclusive in a civil suit for damages in respect of the same act.—5 W. R. 27.

37. Persons claiming under A and B are bound by A and B's admission of C being entitled equally with themselves to ancestral property.—5 W. R. 145.

38. A defendant is not estopped, as to a plaintiff who is a purchaser from a co-defendant in a former case in which a third party was plaintiff, by anything that may have occurred in that case.—5 W. R. 181.

39. A Court is not bound to act on the evidence of two witnesses on whose testimony defendant agreed to rest his case, when such evidence is inconclusive and hearsay.—5 W. R. 234.

40. Effect of a former decision as to the situation of a chur when an 8-anna share was in dispute, upon a suit in which the other moiety is disputed.—5 W. R. 282.

41. Whether a Collector's decree in a suit for enhanced rent, in which the defendant pleads a mokurruree right, bars a suit in the Civil Court by the defendant to establish his mokurruree title, depends on whether the Collector's decision had for its object the adjudication of the mokurruree right.—5 W. R. (Act X) 3. *See* 9 W. R. 592, 11 W. R. 216, 13 W. R. 129, 15 W. R. 424, 18 W. R. 469, 19 W. R. 217, 21 W. R. 25, (F. B.) 24 W. R. 154.

So also as to the genuineness or otherwise of a pottah or kubooleut.—7 W. R. 92, 15 W. R. 415, 18 W. R. 30, 24 W. R. 128.

So an incidental finding as to the validity of an *ekrarnameh* in a suit for rent was held to be no bar to a suit for redemption in which the same *ekrarnameh* was set up—(P. C.) 15 W. R., P. C., 30.

The decision of a competent Civil Court under Act VIII of 1869 (B. C.) on the issue of title estops a subsequent suit for possession.—25 W. R. 189.

42. A petition of satisfaction filed by a decree-holder on condition that the judgment-debtor will withdraw an appeal then pending, does not estop the former from suing out execution if the appeal, instead of being withdrawn, is carried to a hearing.—5 W. R., Mis., 30; 8 W. R. 109. *See* 13 W. R. 311.

43. Plaintiff sued before on a kubooleut of 1864, and did not admit in his plaint that he had cancelled a former kubooleut of 1862, but merely alleged that defendant had executed the kubooleut of 1864 which recited that the kubooleut of 1862 had been voluntarily cancelled by defendant. Defendant denied the kubooleut of 1864, and plaintiff having failed to prove it, is not estopped now from suing on the kubooleut of 1862 and saying that that kubooleut was not legally cancelled by him.—5 W. R., S. C. C., 15.

44. A former decision in a Civil suit in which the issue was the genuineness or otherwise of a kubooleut and the Court held that it was not genuine, but added (as an *obiter dictum*) that the pottah produced by the other side was authentic, does not bar the jurisdiction of a Civil Court in sanctioning a commitment for forgery in respect of the pottah.—5 W. R., Cr., 50. *See ante* 1, 41.

45. A mere decree for rent of certain land in a suit in which no question as to the land being lakheraj was put in issue or decided, cannot operate as a *res judicata* or an estoppel to a suit to obtain a declaration that the same land is lakheraj.—6 W. R. 37.

46. A false admission made by plaintiff's father, whose holding landed property in the zillah in which he held the appointment of sheristadar was forbidden, and who thus had to choose between losing his appointment and telling a falsehood, does not estop plaintiff from setting up the truth.—6 W. R. 38.

47. There must be some intentional mis-statement and consequently prejudice before proof of the real state of things can be shut out.—6 W. R. 163.

48. A purchaser in execution of a decree of a Civil or Revenue Court is not bound by any admission made or act done by his execution-debtor, nor ordinarily by a decree against such person.—6 W. R. 197, 9 W. R. 521. *See* 15 W. R. 237.

49. The decree of a competent Court must be presumed to be valid and binding on the parties until the party attacking the decree clearly shows that it was improperly obtained by fraud or misrepresentation.—6 W. R. 215. *See also* 24 W. R. 217.

50. In a suit by the purchaser of A's jote against the

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zemindar and B to whom the zemindar had given a new lease of the same land, B was held not bound by the zemindar's compromise.—6 W. R. 235.

51. Under Rule 4 s. 97 Act XXXII of 1860, a return made to the Income Tax officer is not conclusive evidence against the party making it, upon the point of perpetuity of tenure.—6 W. R. 252.

52. If a zemindar is unable, at a particular time, to prove that a person apparently holding a tenure in his zemindaree is holding *benamee* for others, but if he can in future years show that such others are really acting as owners, he is not prevented from showing this by a decision as to rents or title in former years.—6 W. R. 266.

53. A party is not bound by an erroneous admission in a petition.—6 W. R. 288. *See also* 10 W. R. 344, 13 W. R. 87.

Held otherwise as to an admission made in a verified petition and repeated in a verified plaint put in by the party himself.—15 W. R. 437.

54. A finding of possession in a miscellaneous proceeding under s. 25 Act X is not binding on the Civil Court.—6 W. R. (Act X) 13.

55. Payment of rent to the representative of a deceased landlord does not estop the tenant from afterwards questioning the title of the said representative.—(F. B.) 6 W. R. (Act X) 71.

So also as to the assignee of the landlord.—24 W. R. 101.

56. When the Collector has found, in a suit from assessment, that the land in suit was not a part of defendant's *istemraree* talook, defendant cannot sue in a Civil Court to establish his *istemraree* talookdaree rights.—6 W. R. (Act X) 101.

57. The survivor of several Hindoo sisters is not bound by decrees obtained against her sisters during their lives, they having only a life interest in their father's property which, on their death, passed to the survivor as heir of her father.—7 W. R. 1.

58. The decision of a Collector on a question of possession and of the right to receive the rent, does not bar an action in the Civil Courts to try the title of the parties.—8 W. R. 67. *See* 14 W. R. 95.

59. A statement of dispossession in a petition under s. 269 Act VIII by claimant of land sold in execution of decree, does not bar a suit subsequently brought to establish claimant's right on the allegation of being in possession.—8 W. R. 95.

60. Estoppels must be made out clearly.—8 W. R. 125.

61. Where a Court is not a Court of *concurrent* or of *competent* jurisdiction, there can be no estoppel. Thus, a decree in a suit for rent in a Collector's Court is conclusive only on the question of rent, and does not operate as an estoppel in a suit in a Civil Court upon a bond, the validity of which was declared by the Collector in pronouncing his decision in the rent suit.—8 W. R. 175. *See* 10 W. R. 75, 13 W. R. 129, 15 W. R. 32, (F. B.) 19 W. R. 322.

So also a Collector's judgment as to the genuineness of a pottah cannot be pleaded as an estoppel in the Civil Court in an action for ejectment of defendant as trespasser.—8 W. R. 487, 12 W. R. 284 (*affirmed by F. B.*) 19 W. R. 322, 20 W. R. 105.

62. A decree of the High Court declaring plaintiff's right to assess rent in land held as lakheraj to be barred by limitation, is still a binding decision as to title.—8 W. R. 288.

63. A stipulation in a bond that all payments should be endorsed on the back thereof and that all other forms of repayment would be futile, does not estop the defendant from proving by other means that the debt, or part of it, has been satisfied.—8 W. R. 316.

64. A judgment in a former suit against plaintiff, to which defendant was no party, is not evidence between the parties to the present suit.—8 W. R. 422.

65. A person is not estoppel by reason of former proceedings taken by him wherein he treated A as his tenant, from afterwards suing in the proper Court, as his tenants, those whom he, upon further information, discovers to be the persons beneficially interested.—(F. B.) 8 W. R. 428.

66. Where an opinion of the High Court in a previous suit was held to be *ultra vires* and not to conclude the parties.—8 W. R. 455.

67. In a suit for enhancement, where plaintiff cannot show the actual terms of the pottah, the kuboolent is conclusive evidence of the tenancy.—9 W. R. 65.

68. Proceedings held by the Revenue Courts in execution of their own decrees (a sale as in this case) are final, and cannot be interfered with by the Civil Courts unless on some special ground, like that of fraud.—9 W. R. 80.

Or where the decision in execution is beyond the decree. —16 W. R. 85.

69. A Revenue Court's decree declaring B to be A's ryot is not conclusive on a question of title.—9 W. R. 306, 359.

70. The dismissal of a suit for the declaration of plaintiff's right to receive rent from a tenant of a portion of an estate, cannot be pleaded as an estoppel in a suit to establish plaintiff's general right as proprietor of the whole estate.—9 W. R. 461.

71. A Revenue Court's decision in a suit for a kuboolent is conclusive only so far as the object of that particular suit extends, and is no bar to a suit for abatement of rent on the ground that he has obtained a decree of the Civil Court that he is a talookdar.—9 W. R. 592. *See* 15 W. R. 424.

72. The dismissal of a suit for rent in the Revenue Court is no bar to a suit in the Civil Court for re-possession and mesne profits.—9 W. R. 594.

73. A suit for a kuboolent is not an estoppel to a suit for re-possession under cl. 6 s. 23 Act X.—9 W. R. 595.

74. Civil proceedings do not constitute a bar to a prosecution in a Criminal Court.—9 W. R., Cr., 22.

75. A suit for a declaration of right and to set aside a *thakbust* proceeding in respect to certain land, is not estopped by s. 2 Act VIII by reason of a decision in a previous suit for the value of fruit growing on that land in which the question of title to the land came collaterally in issue.—10 W. R. 22.

And so, generally, a decision on a collateral issue is not a bar to another suit directly on the point so decided.—16 W. R. 85.

76. The admission by a zemindar that the holding of certain tenants is *mokurruree* at a given rate is binding on any subsequent zemindar not an auction-purchaser at a sale for arrears of revenue.—10 W. R. 72.

77. Where a suit for rent was brought and decided in a Civil Court before Act X came into force, and an issue of title was raised and determined,—*Held* that a second suit for possession was barred by s. 2 Act VIII.—10 W. R. 75.

78. A plaintiff suing for property belonging to a Hindoo widow on the ground of being the adopted son of the deceased husband's brother, is not barred by a decision in a former suit for other property to the effect that he was not an adopted son.—10 W. R. 100.

79. Failure to set forth their title in a former suit brought against them for mesne profits did not estop plaintiffs from now suing to establish their title.—10 W. R. 314. *See also* 14 W. R. 82.

80. A recital in a decree in a suit not between the parties to the present suit, is not evidence to bind defendants.—10 W. R. 177.

81. In a suit for confirmation of title and sale in execution of property the purchase of which by defendant from the original judgment-debtor had been declared by the High Court in a former suit to be null and void,—*Held* that the High Court's decision, though not conclusive evidence against defendant, gave plaintiff a *primâ facie* case. —11 W. R. 118.

82. The presence of a party's mother during the hearing of a case, cannot bind him if she were not there in a representative capacity as his guardian.—11 W. R. 199.

83. A Civil Court's decree fixing the rate of rent in regard to a 10-anna's share of a putnee talook, does not bind the ryot's successor as to the rent claimed from him in a suit for enhancement by the putneedar of the 6-annas' share.—11 W. R. 323.

84. A litigant is bound under s. 2 Act VIII to disclose all his titles at once, and cannot in a subsequent suit plead a right in reserve.—12 W. R. 55, 20 W. R. 482.

85. A suit to recover a share of a deceased father's estate, where plaintiff has accepted and acted upon a decree in a former suit excluding the property from her claim, is barred by s. 2 Act VIII, notwithstanding that her present claim is founded on a *solehnameh* declaring it to have belonged to her father's estate.—12 W. R. 182.

86. The finding of a Small Cause Court in a suit for

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damages for cutting down trees on land alleged to be *plaintiff's, that plaintiff has no right to the land,' does not conclude him in the matter of his title, but gives* him a new cause of action.—12 W. R. 290. *See also* 15 W. R. 166.

87. An order passed by a Collector under s. 25 Act X has not the force and effect of a Civil Court's decree, and is not binding as against an intervenor under that Act.—12 W. R. 322.

88. An intervenor under s. 77 Act X is not barred, by a former decision against him on the ground that he was not then in the receipt and enjoyment of the rent, from coming into Court afterwards and pleading receipt and enjoyment of rent in subsequent years.—12 W. R. 325.

89. A general affirmation of plaintiff's rights in a suit does not estop the question of the genuineness of the document on which it was based being raised in a subsequent suit.—12 W. R. 525.

90. The mere fact of a vendor declaring in her deed of sale of a moiety of a landed estate, that the other moiety is not hers, is not conclusive evidence against her being proprietor of the other moiety, nor can it affect the rights of a purchaser from her of such moiety.—13 W. R. 2.

91. When the whole of plaintiff's title is raised and decided in a suit for possession of land, that decision is conclusive between the parties as to every portion of land held under that title.—13 W. R. 64.

92. There is no such general exception to the rule that a decree is final and conclusive between the parties, as that any of the parties have a right to show the real nature of a *benamee* transaction, and for whose benefit the suit was carried on.—13 W. R. 157. *See* 17 W. R. 454.

93. Where the parties to a suit accept issues wrongly laid down by the Court, they must be held to be bound by them.—13 W. R. 205.

94. Where, after an appeal by defendant, both parties petitioned the Court that they had come to a settlement and the appeal was struck off the file,—*Held* that the original decree stood good except so far as the judgment-creditors were debarred from executing it by their own agreement.—13 W. R. 311.

95. The dismissal of a suit for rent on the ground that defendants were trespassers, bars a suit by them for possession in a Revenue Court.—13 W. R. 342.

96. Where a review had been granted for the purpose of seeing whether a chittah ought not to be used, and the case was remanded for re-hearing, the party was held concluded from objecting that the chittah was improperly made use of upon the re-hearing.—14 W. R. 22.

97. Where in a suit by A against an agent for an account of collections of a share in land, B intervened, and the Court declared A to be the zemindar, this finding was held binding against B in a subsequent suit against him by A for recovery of the same share; and similarly an admission made by B in the former suit was held admissible as evidence against him in the subsequent suit.—14 W. R. 165.

98. In a suit for possession, the fact of plaintiff having been a subscribing witness to a pottah set up by the defendant, is not conclusive against the former.—14 W. R. 293.

99. Defendant was held not estopped, by his application to the Collector for sanction to his having earned an estate out of unoccupied waste land, and by his offer to pay revenue for the same upon his obtaining a settlement thereof, from pleading as against the zemindar that he was not liable as tenant to pay him any rent.—14 W. R. 391.

100. Where a zemindar lets his estate in farm for a term of years, he becomes barred by an adverse award under Act IV of 1840 to which the farmer was a party.—14 W. R. 395.

101. Where a suit for arrears of rent at enhanced rates was dismissed for want of notice, but the pottah was found to be not genuine, the decision was held to be no bar to a subsequent suit for a subsequent year.—14 W. R. 412.

102. A pleading by two defendants, against the suit of another, never can amount to an estoppel between them.—(P. C.) 15 W. R., P. C., 14.

102*a*. Where a party put forward a statement in a Court of justice with the view of defeating the claim of a plaintiff, it was held in a subsequent suit that it was not an estoppel but that it was open to defendant to show the real truth of the transaction.—(P. C.) *ib.*, (P. C.) *ib.* 16, 21 W. R. 422.

So also an act done, as well as a statement made, by a party with the view of defeating a claim made against him does not estop him from disputing afterwards the validity of that act.—24 W. R. 391.

103. *The rule as to estoppel laid down in the Duchess of* Kingston's *case is not technical or peculiar to the law of* England but is perfectly consistent with s. 2 Act VIII.—(P. C.) 15 W. R., P. C., 30; (F. B.) 19 W. R. 322.

104. A plaintiff is estopped from adducing in a subsequent suit a title which he ought to have urged in a former suit.—15 W. R. 168.

105. The rule as to an heir or assignee admits of an exception in favor of the creditor of a deceased proprietor questioning acts done by the said proprietor's benameedar.—15 W. R. 333.

106. Only matters decided between the parties by the decree in the suit should be treated as binding against them in future litigation; no part of the reasoning on the findings of facts is binding further than for the purposes of the particular decision.—15 W. R. 527.

107. Estoppel *in pais, i.e.* by conduct of parties.—16 W. R. 123; 24 W. R. 225, 390, 391; 25 W. R. 281.

108. A person refusing a registered letter sent by post cannot afterwards plead ignorance of its contents.—16 W. R. 223.

109. Decisions against one heir are not binding against other heirs, nor decisions against one person binding against others who do not derive title from him.—16 W. R. 298.

110. A decision between a ryot and a body of co-sharers is not binding upon the several co-sharers *inter se*.—17 W. R. 191.

111. A judgment-creditor, by putting up the rights and interests of his judgment-debtor in a talook for sale in execution, is not estopped from afterwards claiming a portion of that talook under a different title, *e.g.* under a mortgage.—17 W. R. 342.

112. In a former suit where A. G., a decree-holder, sought to establish his right in execution to a talook as belonging to his judgment-debtor R. R., and D. S., a defendant in that suit, pleaded that the talook had been conveyed to him by R. R. under a *hibbanamah*, and it was decided that the talook did not belong to D. S. and was liable to be sold,—*Held* that it was not open to D. S. to sue for a declaration of his right to a half share of the talook as against A. G.—17 W. R. 350. *See* 22 W. R. 349.

113. Failure in a former suit to establish plaintiff's right to certain land as belonging to her *putnee* talook, will estop her from suing again for the same land as belonging to her *mourosee*, the cause of action being the same.—17 W. R. 351.

114. Plaintiff having endeavoured, as representative of his father when the reversion opened out, to obtain possession under a decree which declared the father's title as reversioner, was opposed by defendants who obtained a judgment of the High Court that plaintiff's father was no longer heir under the Hindoo law on the ground of supervenient insanity. Plaintiff having now sued to establish his own title as heir, defendants were held estopped from pleading that plaintiff's father was not disqualified by insanity which was not congenital.—17 W. R. 422.

115. A return made to a Collector by an occupant of land, stating the amount of rent, is an admission as to the amount of rent, binding upon the occupant and all who claim under him.—18 W. R. 105.

116. A purchaser at a sale in execution is not in the position of a person who takes a conveyance direct from the party, and is not bound by a statement made by the judgment-debtor on some previous occasion in a mortgage. If a party to that mortgage, the admission so far may be used as evidence against him.—18 W. R. 200.

117. A party, by representing the fact of an adoption which he erroneously concludes to be an adoption valid in law, cannot be charged with misrepresentation so far as the fact is concerned, and is not estopped from setting up the true facts of the case.—(P. C.) 19 W. R. 12.

118. A party is not concluded by his own representations unless they have been acted upon by the opposite party. If treated merely as admissions not acted upon, it may be shown by the party who made them, even if they had been made fraudulently, that they were not true.—20 W. R. 223.

119. *Quære*—What is the effect of admissions made by a person who subsequently adopts another, in binding the

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person adopted, — whether the person adopted can be said to derive title from the adopted in such a way as to make the admissions evidence against him.—*Ib.*

120. A Lower Appellate Court was held to have been wrong in treating as an estoppel the plaintiff's deposition in a former case when no issue had been raised on the point by the first Court in the present suit.—20 W. R. 314.

121. The doctrine of estoppel by deed is not applicable to India, and thus a party giving a kubooleut nominally in favor of A, is not estopped from pleading that he did not contract with and knew nothing of A, whose name was used merely as a matter of convenience between the lessee and A's husband.—20 W. R. 352.

122. An *ex-parte* decree for rent at a higher rate is not conclusive proof that the land was held for the year to which the decree relates at that rate until it has been executed.—20 W. R. 466.

123. In a suit for possession of land brought against a tenant who is really a trespasser, the defendant, by merely alleging tenancy in his written statement, does not preclude himself from pleading limitation.—(F. B.) 21 W. R. 70. (*over-ruling* 7 W. R. 395).

124. Even where the object of a *benamee* transaction is to obtain a shield against a creditor, the parties are not precluded from showing that it was not intended that the property should pass by the instrument creating the *benamee*, and that in truth it still remained with the person who professed to part with it.—21 W. R. 422, 23 W. R. 42.

125. In a suit to enforce a lien created by a mortgage-bond on property which was sold by the mortgager one month later to defendant,—*Held* that defendant, as standing in his vendor's shoes, was not concluded by a decree for money obtained in the Small Cause Court by plaintiff against the mortgager a month after the bond, as the Small Cause Court could not have jurisdiction to decide as to the lien and its decree would only be relevant as showing that defendant at the time owed the money to plaintiff; but that it would be open to defendant to question the execution and *bona fides* of the bond as affecting the property which he had taken by conveyance.—22 W. R. 349.

126. The decision of the Collector's Court in a former suit brought under Act X of 1859, that the land in respect of which enhancement was claimed was not lakheraj, is not conclusive, as regards that issue, in a similar case subsequently brought in the Civil Court under Act VIII of 1869 (B. C.).—(F. B.) 24 W. R. 154. *See* 25 W. R. 189.

127. The decision of the High Court on a question of law is conclusive, as regards that particular question, so far as any subordinate Court is concerned.—24 W. R. 173.

128. A rent-suit having been dismissed upon defendant denying that he was a tenant of plaintiff, defendant was not allowed, in a subsequent suit brought by plaintiff for *khas* possession, to turn round and say that plaintiff could only recover rent from him after making a settlement with him and could not succeed in obtaining *khas* possession.—24 W. R. 273.

129. Where a judgment-debtor's pleader pleaded in the Court below on the assumption that the decree was a money-decree which the Court had jurisdiction to make, it was held not open to him in appeal to urge that it was not a money-decree which the Court had no jurisdiction to make.—24 W. R. 363.

130. Where a suit was brought for a year's rent, and the tenant claimed abatement, and a judgment was obtained which determined the amount to be abated on materials which would be applicable to one year as well as to another, —*Held* that the question of abatement of rent was determined between the parties not only for the one year of which the rent was in suit, but for all future years.—24 W. R. 408.

131. A decree obtained by one party against another is not conclusive evidence against the title of a third party.—24 W. R. 431. *See also* 25 W. R. 57.

132. A decree against the registered tenant, in a suit for rent against him and another, is not binding evidence of the possession of such tenant, as between him and the other, in a subsequent civil action.—25 W. R. 23.

133. A receipt for rent in which the zemindar styled himself "zemindar of 4 annas," but which showed that the ryot did not pay the zemindar the full 4 annas' share of the rent, was held not to estop the ryot from questioning the landlord's title.—25 W. R. 69.

134. Where a claim to an estate, based on a conveyance, was declared in one suit to be valid as between the parties to the conveyance, but was in the present suit set aside on the ground that it was a voluntary conveyance and void as against the creditors of the vendor,—*Held* that the judgment in the first suit did not operate by way of estoppel in the present suit.—25 W. R. 144.

135. In a former suit for ejectment (which was brought in the name of the *ijaradar*, and which the defendants treated as being in fact the suit of the zemindar) it having been decided that the defendant's plea of holding rent-free *chakeran* lands was not valid, and that they had only a right of occupancy and were liable to payment to the zemindar; and a suit for rent was afterwards brought by the zemindar on defendant's failure to pay the same,—*Held* that the decision in the former suit was binding on the defendants, as establishing the relation of landlord and tenant and as to their liability to pay rent.—25 W. R. 370.

136. Where plaintiff and defendant in a suit had both been defendants in a former suit in which defendant had, under a misapprehension of the effect of s. 73 Act VIII, applied to be brought on the record as defendant, but was not allowed to give evidence, and in the result the suit was dismissed (*i.e.* plaintiff's claim in that suit was thrown out),—*Held* that the decision in that suit was not conclusive as between the present parties.—25 W. R. 416.

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Witness 43.

Evidence (Hearsay).

See Evidence 4, 5, 35, 52.

Evidence (Medical).

1. The substance of a report from a native doctor with an expression of concurrence by the Civil Surgeon, cannot be used as evidence under s. 368 Act XXV of 1861.—11 W. R., Cr., 2.

2. A letter of a medical officer expressing an opinion is not evidence under s. 368 or s. 370.—12 W. R., Cr., 25.

3. Under s. 370 the original report of the Chemical Examiner bearing his signature, and not a copy of the report, should be put in evidence.—15 W. R., Cr., 49.

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Evidence (Oral).

1. The adjustment of an account may be proved by — and need not be signed by the party to be bound.—(F. B.) W. R. F. B. 82.

2. It is no variation of the terms of a document to prove by — that a person, apparently a principal, was in fact only an agent.—1 Hay 24 (Marshall 3).

3. As there is no Statute of Frauds in India, the Courts unwillingly allow — to add to the conditions of a written instrument.—1 Hay 325.

4. Of single witness.—*See* Bond 4; Evidence (Corroborative) 1, 2, 3; Kidnapping 5; Murder 4; Separation 3; State Offences 2; 16 *post*.

5. Was not admitted to vary substantially, or to contradict, the nature and intent of precise and formal deeds.—2 Hay 328. *See also* 11 W. R. 307.

6. Was admitted to supply words in an old deed lost in consequence of the parts on which they were written having been eaten by insects.—Marshall 620.

7. Was admitted to vary the terms of a written contract in a case where the plaintiffs had been fraudulently induced to sign a document which was in terms a sale, when the stipulation between the parties was that the transaction was a conditional sale redeemable in two years.—L. R. 140.

8. Cannot be admitted to contradict a deed except where fraud, mistake, surprise, or the like is alleged.—W. R. Sp. 58, 1 W. R. 76.

9. May be received as to the contents and genuineness of a deed which was destroyed during the Mutiny, and of which no copy exists.—W. R. Sp. 264 (L. R. 42).

10. Not admissible to set aside a deed of sale which, by its terms, is clearly absolute.—W. R. Sp. 388 (L. R. 159). *See also* 12 W. R. 264.

11. Though admissible to explain a written instrument, cannot be admitted to vary its terms when in themselves clear and undoubted.—W. R. Sp. (Act X) 22, 7 W. R. 144.

12. Admissible to show that, notwithstanding a deed purports to be a deed of absolute sale, the true nature of the transaction is a mortgage.—1 W. R. 22, 18 W. R. 256.

13. Admissible to explain a deed.—1 W. R. 94, 8 W. R. 152.

Of pottah.—9 W. R. 566.

14. Of the contents of a decree inadmissible where the original existence of the decree is not proved.—1 W. R. 212.

15. Valid reasons should be given for rejecting oral testimony.—2 W. R. 278.

16. Under s. 28 Act II of 1855 the deposition of a single credible witness is sufficient in law.—2 W. R., Cr., 3; 8 W. R. 60; 10 W. R. 236; 11 W. R. 194; 18 W. R. 340. *See* 4 *ante*.

17. Of a deposit is not insufficient.—3 W. R. 94.

18. Is not admissible to vary or alter the terms of a written contract in which there is no fraud or mistake, and in which the parties intended to express in writing what their words import—*e.g.* to show that a deed of absolute sale was intended to operate as a mortgage.—(F. B.) 5 W. R. 68. *See also* 6 W. R. 111, 7 W. R. 334, 8 W. R. 339, 9 W. R. 251, 11 W. R. 450, 18 W. R. 256, 19 W. R. 333.

So also under s. 92 Act I of 1872.—23 W. R. 167.

The above rule is not applicable where the parties did not intend that the writing should contain the whole agreement; and this may appear either by direct evidence or by informality in the writing.—14 W. R. 319.

19. Not admissible to show that an absolute sale was intended to operate as a conditional sale in order to defeat a right of pre-emption.—(F. B.) 5 W. R. 76.

20. A Cazee's deposition of a vendor's admission to him of a sale and receipt of the consideration, together with the conduct and statements of the parties, form legal evidence of the sale as against the vendor.—5 W. R. 175.

21. The object and importance of cross-examination.—6 W. R. 181. *See also* 9 W. R. 587.

22. Is admissible to show that the name of the party used in a deed was only *benamee* for another person.—6 W. R. 191. *See* 14 W. R. 12. *But see* 12 W. R. 264.

23. Is admissible to prove that the consideration stated in a deed to have been paid was not paid; but not to prove that only a small portion was paid, and the rest was to be paid in the event of the successful termination of a suit then pending.—6 W. R. 267. *See* 7 W. R. 428, 8 W. R. 339, 12 W. R. 264.

24. Upon criminal trials in the Mofussil, a wife is competent to give evidence for or against her husband, or for or against any person tried jointly with her husband.—(F. B.) 6 W. R., Cr., 21.

25. The — of persons who are themselves liable to punishment should be carefully sifted and tested before they can be relied on.—6 W. R., Cr., 77.

26. In ordinary cases, where there is no community of interest, any one of a number of prisoners jointly indicted may be called as a witness either for or against his confederates.—6 W. R., Cr., 91, 109.

27. Is admissible to prove a verbal contract.—7 W. R. 353.

28. Is admissible in a suit for purchase-money to show how the purchase-money was apportioned.—7 W. R. 408.

29. Is legally sufficient to prove a prescriptive title.—7 W. R. 462.

30. Accused persons discharged by the Magistrate for want of evidence may be examined as witnesses.—7 W. R., Cr., 44.

31. The — of a Policeman who overheard a prisoner's statement made in another room and in ignorance of the Policeman's vicinity, and uninfluenced by it, is not legally inadmissible.—7 W. R., Cr., 56.

32. Admissible to show that a village not included in a

Evidence (Oral) (*continued*).

putnee lease was intended by the parties to be included in it.—8 W. R. 152.

33. In a suit brought on an allegation of forcible dispossession, — is sufficient to establish the fact of possession. —8 W. R. 328.

34. Mere — without any documentary evidence is insufficient to prove possession of land.—8 W. R. 341.

35. Is sufficient, without documentary evidence, to prove a fact or a title.—8 W. R. 366; 18 W. R. 314, 323. *But see* 9 W. R. 155.

To hold otherwise is an error in law.—18 W. R. 348.

36. Admissible to explain the conduct of the parties, the value of the property, and other circumstances connected with the transaction.—8 W. R. 515.

37. Plaintiff's statement on oath, if unrebutted, is some evidence of an alleged fact, and cannot be objected to in appeal.—8 W. R. 519.

38. Of a Judge or Magistrate.—*See* Judgment 11; Practice (Criminal Trials) 21.

39. Is as good for proving title to land as documentary evidence.—10 W. R. 217.

40. The evidence of a defendant is admissible in favor of his co-defendants.—10 W. R. 261.

41. The — of persons able to testify to certain lands being *mál* is not to be rejected as hearsay.—10 W. R. 413.

42. Where there is an acknowledgment in writing of a debt due, — is admissible in order to show to what debt the acknowledgment related.—12 W. R., O. J., 2.

43. Is admissible to prove the existence of an agreement. —12 W. R. 395.

44. Is admissible to show that a written instrument does not correctly set forth the terms of the arrangement between the parties, so as to justify a Small Cause Court, or a Court of Equity, in amending the agreement in a suit for the purpose.—12 W. R. 532.

45. The rule refusing to allow an agent, who appears in a written contract as principal, to offer — to exonerate himself, is not applicable to a case in which either landlord or tenant is a *benamee* holder.—14 W. R. 12.

46. The — of a defendant's agent in the absence of defendant's own deposition, though not full and complete, was held to be legal evidence.—15 W. R. 157.

47. The evidence of the *putwaree* as to previous collections, corroborated by the *jummabundee* papers of those years, is conclusive in a suit for rent.—20 W. R. 142.

The *jummabundee* papers are valueless without the — of the *putwaree*.—22 W. R. 256.

48. Is admissible to prove that a document relied on was not executed.—20 W. R. 184.

49. A deposition made by a plaintiff in a former suit brought against a Hindoo widow as such when she was only manager of the property during the minority of an adopted son then in existence was held not admissible in evidence, under s. 33 Act I of 1872, in a subsequent suit brought by the widow after the death of the said adopted son, and as mother and guardian of a second adopted son, who, having been adopted after the death of the other adopted son, could not be considered a representative in interest of the widow the party to the former suit.—23 W. R. 42.

50. A deposition made by a person wherein he denied on oath that he had presented a certain petition in Court, which purported to be from him, was held to be inadmissible as evidence under s. 33 Act I of 1872, because the person might have been, but was not, brought into Court by those who pleaded the deposition.—23 W. R. 343.

51. The English record of a Magistrate was held not legal evidence under s. 91 Act I of 1872 of what a prisoner stated before the Magistrate.—23 W. R., Cr., 28.

52. Is not admissible to prove the terms of a written contract.—24 W. R. 88.

53. Where the — taken fell short of the requirements of s. 63 Act I of 1872 only because the witnesses were not properly questioned, the High Court in special appeal held it to be unjust to let the plaintiff suffer on account of the inefficiency of his legal adviser.—24 W. R. 232.

54. Although according to s. 91 Act I of 1872, — is not admissible to prove the contents of a pottah, yet — was held admissible to prove a tenancy without the production of the pottah.—24 W. R. 425.

55. A copy of a deposition of a Cazee in a former case, in which defendants were not parties, is not admissible as evidence while the Cazee is admittedly alive and can be examined.—24 W. R. 472.

See Boundary 5.
Contract 8, 34.
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" (Corroborative) 1, 2.
" (Documentary) 42, 61, 95, 99.
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" Dispute 18.
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Practice (Commissions) 18, 19.
" (Parties) 80.
" (Possession) 4, 5.
Promissory Note 2.
Registration 52, 107.
Survey 1.
Will 67.
Witness.
Written Statement 8.

Evidence (Presumptions).

1. Of separation in a Hindoo family. —W. R. F. B. 18.

2. A strong presumption in favor of a valid title in plaintiffs was held to arise from their long and undisputed enjoyment of the property until the defendants displaced the plaintiffs' presumptive title by proof of some right in themselves or others.—1 Hay 567.

3. Receipt of rent at other places raises the presumption that the obligation to pay rent at a particular place was waived.—2 Hay 513.

4. When a man, pending a suit against him, conveys away his property, the conveyance may very reasonably be presumed to have been executed to defeat his creditors in the absence of proof by him to the contrary.—Sev. 31.

5. A decree in a former suit declaring the rent payable by a ryot is — of the rent still payable by him.—W. R. Sp. (Act X) 95 (3 R. J. P. J. 26).

6. Plaintiff's acknowledgment in a former case of having realized rents for 3 years may afford some presumption that the older items were satisfied, which, if not rebutted, might be an answer to an action on the older demand.— W. R. Sp. (Act X) 97 (3 R. J. P. J. 30).

7. An instrument in an apparently altered and suspicious state is liable to the presumption of its being false.—(P. C.) 1 W. R., P. C., 36 (P. C. R. 465).

8. In considering a case upon evidence, all the presumptions for or against should be received in connection with the oral or documentary evidence.—(P. C.) 5 W. R., P. C., 55 (P. C. R. 628). *See also* 9 W. R. 289, 11 W. R. 482, (P.C.) 17 W. R. 1.

9. Conduct which defeats an ordinary presumption and shifts the *onus probandi*, does not necessarily invalidate all the evidence which is offered in proof.—5 W. R. 34.

10. The consent of the then reversioner to a sale by a Hindoo widow, though not binding evidence on the present heir, is strong presumption of the existence of necessity at the time of sale, to be rebutted only by proof of fraud and collusion or of the absence of necessity.— 6 W. R. 51.

11. The fact of a mouza being held for many years as part of a mehal or zemindaree affords strong presumption, though never conclusive evidence, that the mouza is part of that estate, even as against a purchaser at a sale for

EVIDENCE (PRESUMPTIONS) (*continued*).

arrears of revenue of another mehal who claims that part of the mehal purchased by him.—7 W. R. 207.

12. An adversary is entitled to the benefit of such presumptions as naturally arise from a party's failure to prove his allegations, even though the *onus* was in the first instance on the former.—8 W. R. 395.

13. Where facts are as consistent with a prisoner's innocence as with his guilt, innocence must be presumed. —8 W. R., Cr., 87.

14. A Judge's statement must be taken to be accurate until shown to be otherwise.—10 W. R. 232.

15. Where the conveying party remains in possession after executing a deed of conveyance of his entire property to his son, the inference is that the deed was not intended to operate.—10 W. R. 449.

16. The rule is to presume that a Lower Court has done its duty; neglect of duty cannot be assumed at the suggestion of an appellant.—11 W. R. 465. *See also* 18 W. R. 15, 25 W. R. 62.

17. In a case of misappropriation of property, the strongest presumption should be made against the wrongdoer, and the highest value assumed.—11 W. R. 536.

18. The presumption raised by plaintiff's continued and undisturbed possession of land in the bed of a river which has changed its course, is not rebutted by defendant's allegation that he is entitled to the julkur of the river.—11 W. R. 566.

19. If a criminal fact is ascertained—an actual *corpus delicti* established—presumptive proof is admissible to fix the criminal.—11 W. R., Cr., 25.

20. The attestation of a Magistrate is *primâ facie* proof of the examination attested.—11 W. R., Cr., 39.

21. In a suit to recover possession of the beds of tanks situate within plaintiffs' estate, but gradually reclaimed and made fit for cultivation by defendant, although plaintiffs could not, from the nature of the ground, show any direct acts of ownership, the presumption was that, until dispossessed by defendant, they were sufficiently in possession to maintain right of suit.—14 W. R. 57.

22. Where the amount of rent stated in a decree had not been paid for 20 years, it is fair to presume that the parties had abandoned the decree.—17 W. R. 418.

23. Because in a partition-deed of 1260, in the column showing the shares of the different members of the family, N's son's name appears instead of N's name, it does not follow that N was then dead.—18 W. R. 32.

24. In a suit to recover possession of a *julkur* of which plaintiffs alleged themselves to be in enjoyment down to the year 1266 when they were ousted by Government, who ultimately relinquished their rights in favor of defendants, —*Held* that if plaintiffs made out their possession down to 1263 and defendants did not show a clear interruption of that possession immediately subsequent to 1263, plaintiffs were entitled to the presumption that the possession had continued down to the interruption by Government in 1266. —21 W. R. 138.

25. Where the question as to possession was doubtful, a Civil Court was held to have rightly presumed ownership from the fact of enjoyment of the fruits of trees growing on the disputed land.—22 W. R. 405.

26. As in civil suits, so in rent suits, all things must be presumed to have been correctly done. It is not necessary to enquire into the instructions which Revenue agents receive; and, until the contrary is shown, the parties must be held to have been properly represented, and to be bound by the decisions.—23 W. R. 79.

See Acquiescence 2.
Arbitration 42, 80.
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Bond 22, 25.
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,, ,, (Inheritance and Succession) 7.
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Mortgage 168, 185, 204.
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Pottah 14, 25, 31.
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,, (Execution of Decree) 20, 156, 231.
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Rent 30, 44, 45, 102, 103.
Resumption 12, 24.
Right of Way 16.
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EVIDENCE (PRESUMPTIONS) (*continued*).

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Settlement 10.
Special Appeal 70.
Survey 80.
Transferable Tenure 10.
Tree 7.
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Waste Land 8.
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Evidence (Secondary).

See **Evidence 6, 16, 50, 70, 91.**
„ (Admissions and Statements) 9.
„ (Documentary) 5, 6, 7, 13, 17, 24, 26, 27, 29, 37, 39, 52, 61, 66, 81, 97, 100, 104, 108, 115, 116, 121.
„ (Oral) 6, 58.
Practice (Parties) 42, 46.
Registration 68, 133.
Rent 46.
Summons 8.
Survey 18, 27.
Witness 73.

Excavation.

Where joint owners of land make an — which causes injury to their co-sharers, the remedy of the latter lies in an action either for partition or for damages.—20 W. R. 236.

See Damages 50.
Jurisdiction 298.
Landlord and Tenant 40.

Excise.

1. A Magistrate may impose a fine exceeding 1000Rs. under the — Act XXI of 1856, s. 22 Act XXV of 1861 notwithstanding.—7 W. R., Cr., 29.

2. Under s. 43 Act XXI of 1856, only persons holding licenses, and not their servants, are subject to the penalties specified in the section.—8 W. R., Cr., 4. *See also* 25 W. R., Cr., 42.

3. Acts XXI of 1856, XXIII of 1860, and XX of 1864, not having been extended to British Burmah, the Abkaree rules passed by the Chief Commissioner, were declared not to have the force of law.—10 W. R. 350.

4. Where a person sells liquor in contravention of and under color of a license which is not in his own name but in that of the person for whom he is the recognized agent, he cannot be allowed to evade the provisions of s. 43 Act XXI of 1856 by setting up that it is not a license to himself.—19 W. R., Cr., 34.

5. A contract by which a person who has an — license under Act II of 1866 (B. C.), lets his shop and the use of the license for a fixed term, receiving rent, is contrary to the policy of the law, and comes within the rule that a contract which is illegal or contrary to public policy cannot be enforced.—21 W. R. 289.

6. To warrant a conviction under s. 48 Act XXI of 1856, the accused must have manufactured some country spirit made by the native process of distillation as described in s. 90, or they must have sold spirituous or fermented liquors or intoxicating drugs.—22 W. R., Cr., 8.

7. A suit will not lie against the Government for compensation for damages sustained through the wrongful acts and defaults of — officials done in the exercise of sovereign powers.—(O. J.) 24 W. R. 309.

See **Abatement 5.**
Practice (Amendment) 31.

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Idiot.
Insanity.
Leprosy.
Lunatic 8, 21.
Onus Probandi 256.
Profligacy.

Execution of Decree.

See Practice (Execution of Decree).

Executor.

1. An — will not be held liable for *devastavit* if the will was so framed as to mislead him, and he was not called upon to act differently from his own views by any parties taking an interest under the will.—2 Hyde 3.

2. Without intending to rule that, in all cases where an ordinary administration account has been directed, the value in money of a specific chattel shown to have been possessed by an —, and not forthcoming, is to be charged against him,—*Held* that, notwithstanding the language of the decree, it was in the circumstances of this case competent to the Master in taking the account, and to the Court upon the report, to charge the — for the value of certain property in the possession of the original — and not forthcoming and accounted for. As to payments stated in the schedule, and in the discharge, as made on account of just demands in the estate, it is competent to the — to prove them as made on dates other than those stated in the schedule and discharge.—(P. C.) 4 W. R., P. C., 106 (P. C. R. 281).

3. A Judge is not precluded, by reason of a will and the existence of executors under the will who have taken out a certificate under Act XL of 1858, from enquiring into a complaint against the executors.—6 W. R., Mis., 123.

4. Although the — defendants first gave orders for a 3rd class funeral for the deceased, yet, as they by their conduct induced the plaintiff to furnish a 2nd class funeral, they were held liable to pay for the same, whether they had assets or not. —6 W. R., Cr., 27.

5. Infidel Executor.—*See* Will 26.

See Certificate 11, 27, 28, 114.
Court Fees 8.
Evidence (Admissions and Statements) 8.
Legacy 2.
Limitation (Act XIV of 1859) 172.
Minor 10.
Mortgage 50, 211, 212.
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Will 26, 34, 47, 48, 53, 69.

Exhibit.

See Court Fees 5.
Evidence (Documentary) 46, 74, 105.

Ex-parte Application.

An — should be based upon truth.—16 W. R., Cr., 49.

Ex-parte Judgment or Decree.

1. The right of a defendant (under s. 119 Act VIII) to a hearing without deposit of amount of decree, is not affected by s. 12 Act XLII of 1860.—S. C. C. 29.

2. An appearance by defendant in person or by pleader, without putting in any answer or written statement, is an appearance within the meaning of the same section, and the judgment pronounced thereafter is not an *ex-parte* judgment, and therefore an appeal will lie.—1 Hay 70 (Marshall 32); 7 W. R. 295. *See also* 20 W. R. 53. *See* 30 *post.*

But the mere filing of a *vakalutnamah* is not appearing in person or by pleader.—7 W. R. 81.

3. The defendant, upon the day fixed for the hearing, presented a petition through a mookhtar to put off the trial for a few days, but further than this did not appear. *Held* that a decision given thereafter in favor of the plaintiff was "a judgment passed *ex-parte* against a defendant who had not appeared" within s. 58 Act X, and that no appeal therefore lay therefrom.—2 Hay 668 (Marshall 571).

4. The Court making an *ex-parte* order has authority to recall it if it appears to have issued improperly or under any mistake of facts; but application against an *ex-parte* order should be made at the earliest moment.—Sev. 479. *See also* 13 W. R. 232.

5. Where good cause is shown for non-appearance, the Court may, under s. 119 Act VIII, restore to the Board a suit dismissed for default.—2 Hyde 216.

6. The defendant was held entitled to a re-hearing under s. 119 Act VIII, in the case of an *ex-parte* decree passed against him after the passing of that Act, although the suit had been instituted under the old procedure.—W. R. Sp., Mis., 36.

7. Procedure on application under s. 119 Act VIII to set aside —.—5 W. R., Mis., 11.

8. A defendant who appeared at the first hearing, but on whose absence at the adjourned hearing an — was passed against him, is not debarred from an appeal under s. 119 Act VIII.—6 W. R. 86.

Nor under s. 58 Act X.—14 W. R. 27.

9. A decree obtained upon a fraudulent confession of judgment is an *ex-parte* decree entitling the defendant to a new trial under s. 119 Act VIII.—6 W. R., Mis., 36. *See also* 22 W. R. 213.

10. The 30 days "after any process for enforcing the judgment has been executed," within which a defendant may apply under s. 119 Act VIII for an order to set aside an *ex-parte* decree, mean 30 days after the execution of any process against the person or property of the defendant.—6 W. R., Mis., 51; 15 W. R. 210. *See also* 25 W. R. 72. *But see* 7 W. R. 198; *and see* 16 *post.*

11. Object of s. 119 Act VIII.—7 W. R. 375, 8 W. R. 260, 15 W. R. 431.

12. S. 119 Act VIII will not apply to a decision passed on appeal against a respondent.—7 W. R. 425.

13. The procedure under Act X of 1859 does not provide for the entertainment of a second application to set aside an — after the first has been dismissed for default.—8 W. R. 87.

14. Where one defendant appears and the other does not, and a decree is given against both, if the defendant who did not appear gets the decree set aside under s. 119 Act VIII, the Court cannot open it up in investigating the case again with regard to the other defendant.—8 W. R. 260.

15. In a suit for declaration of title, under a *hibbanama,* in certain lands sold in execution notwithstanding plaintiff's unsuccessful intervention under s. 246 Act VIII, the *hibbanama* having been found to be false, plaintiff was held not entitled to an — against the auction-purchaser, merely because the latter had been made a defendant and summoned under s. 162 and had not appeared, when it was not shown that plaintiff had taken the necessary steps to enforce the auction-purchaser's appearance.—8 W. R. 422.

16. If a party means to contest an — on the ground that he had no notice of the summons, he must come in within 30 days from the issue of the attachment in cases under s. 119 Act VIII, or within 15 days in cases tried under s. 58 Act X.—(F. B.) 9 W. R. 236. *See also* 9 W. R. 330, 15 W. R. 315, 19 W. R. 129.

See also as to cases under s. 119 Act VIII as governed by the limitation prescribed by Art. 157 sch. II. Act IX of 1871.—26 W. R. 98.

17. Where a decree for possession is passed without any special orders under s. 116 Act VIII regarding a defendant who did not appear, there has been no —.—9 W. R. 597.

18. Where an — is set aside and a new trial granted under s. 119 Act VIII, an attachment made under that decree falls to the ground, but a sale made after the decree has been set aside is not invalidated under s. 240.—10 W. R. 99.

19. Where a defendant, when duly summoned, fails to appear, the Court may pass an — under s. 170. But if defendant has entered appearance and filed a written statement, and the Court has proceeded to take the evidence of plaintiff's witnesses, the case cannot be treated as an *ex-parte* one, and defendant is entitled to cross-examine plaintiff's witness by his vakeel.—11 W. R. 5.

20. Where one defendant who did not appear applied, under s. 119 Act VIII, to get an — set aside, and another, who also did not appear, did not in like manner apply, but came in with a petition at the second hearing, alleging that summons had not been duly served, and the case was dismissed *in toto,*—*Held* that the second defendant had a good *locus standi* and could take advantage of the order of dismissal.—11 W. R. 18.

21. Where a defendant was absent when the adjourned hearing of his case commenced, but came into Court before judgment was recorded and his evidence was on the record, the judgment against him was held not to be an — within the meaning of s. 119.—12 W. R. 169.

22. No — can be passed without proof of due service of summons.—12 W. R. 210, 17 W. R. 357.

23. It is not necessary that the judgment-debtor should have special notice of any process for enforcing an —; he is bound to seek the remedy provided by s. 119 within 30 days of any process to execute the judgment.—13 W. R. 436.

24. A decree founded on a *solehnamah* is not an — and cannot be disturbed by a resort to s. 119 Act VIII.—14 W. R. 299.

25. No appeal lies from an — passed under s. 58 Act X, where the reasons assigned for the absence of the defendant are wholly unsatisfactory.—14 W. R. 349.

26. A Small Cause Court may, at the instance of one of the defendants, set aside an — as to all.—15 W. R. 371.

— So also an application under s. 119 Act VIII.—20 W. R. 287.

27. A case decided *ex-parte* notwithstanding that defendant was present and through his pleader repeatedly asked for time to enable his witnesses living in distant and different districts to be present, was not treated as an *ex-parte* hearing so as to bar an appeal under s. 119 Act VIII from a judgment passed at such hearing.—15 W. R. 503.

28. The Court declined, on appeal from an order rejecting an application under s. 119 Act VIII to set aside an —, to receive an affidavit which had not been previously tendered, and held that s. 355 was not meant to apply to such a case.—17 W. R. 390.

29. Where a Deputy Collector refuses to set aside an — for rent below 100Rs., the remedy lies in an appeal to the Collector under s. 14 Act VI of 1862 (B. C.), and not in a civil suit.—17 W. R. 413.

30. The appearance of a defendant by a vakeel for leave to be heard in answer to the suit under s. 111 Act VIII is not an appearance within the meaning of s. 119 sufficient to prevent an — being passed against him.—18 W. R. 400.

31. Where defendant was prevented by plaintiff's fraud from appearing on the last day of hearing, the suit was held to have been decided *ex-parte* notwithstanding that he had been represented on the first day of hearing, and the first Court was held to have done right in restoring the case to the file under s. 119 Act VIII.—18 W. R. 457.

32. The words in s. 56 Act X as to a summons or proclamation having been "duly served according to the provisions of this Act," refer to the mode of service and not to the agency by which it is effected; and the fact that the summons was not served through the Collector of the District (as required by s. 47), but by an officer of the Court itself, would be no ground for not proceeding with the case if the summons had been served as required by s. 45; an irregularity of this kind, by which the party is not injured, does not vitiate the proceedings or render the — void.—19 W. R. 234.

33. Where the discretion which a Civil Court possesses,

Ex-parte Judgment or Decree (*continued*).

either under s. 127 or s. 170 Act VIII, was held to have been not rightly exercised.—20 W. R. 165, 22 W. R. 270.

34. Where a judgment-debtor applies to set aside an — on the ground that there was no effectual service of the summons upon him, he should be called upon (under s. 119 Act VIII) to give his evidence or to make out a *primâ facie* case.—21 W. R. 242, 22 W. R. 423.

35. M sued A and others on a bond-debt and obtained a decree from the Sub-Judge against A alone. He appealed to the District Judge, who passed a decree declaring all parties to be liable jointly. On the decree-holder taking out execution, two of the defendants applied to the Sub-Judge under s. 119 Act VIII. *Held* that the Sub-Judge had no jurisdiction in the matter, inasmuch as he had passed no —; but that the proper course for the parties was to apply to the District Judge under s. 119.—22 W. R. 537.

36. Where an — was passed against three defendants and instead of serving summons on each as required by s. 48 Act VIII, there was no attempt to prove service of summons beyond the fixing of it to the house of only one of them,—*Held* that the Court should have granted a new trial under s. 119.—25 W. R. 394.

37. Where an — was given against a party and her application for a rehearing under s. 119 was refused and she did not appeal,—*Held* that she could not sue to have the — set aside on behalf of another party to whom she alleged she had sold her rights and had bound herself to bring this suit.—25 W. R. 420.

See Appeal 10, 13, 86, 107, 127, 164, 179, 199.
Auction-Purchaser (Execution Sale) 21*a*.
Champerty 8.
Co-sharers 28.
Default.
Dismissal of Suit or Appeal.
Enhancement 204.
Evidence 57, 71, 85.
,, (Estoppel) 122.
High Court 63.
Hindoo Law (Coparcenary) 91.
Intervenor 63.
Jurisdiction 351.
Landlord and Tenant 26.
Municipal 80.
Practice (Appeal) 73, 74.
,, (Execution of Decree) 99, 159.
,, (Review) 20, 68, 78, 80.
,, (Suit) 49.
Re-hearing 1*a*, 2, 3, 5, 6.
Rent 12, 81, 84.
Resumption 20.
Revival of Suit or Appeal 1, 2, 3, 4, 5, 8.
Right of Appeal 1.
Sale 16, 157*a*.
Small Cause Court 37, 43.
Special Appeal 4, 26, 31, 61, 65, 83, 97.
Summary Award for Rent.
Vendor and Purchaser 57.

Extortion.

1. The tenor of a criminal charge is a fear of injury under s. 383 Penal Code, and — under ss. 388 and 389 may be equally committed whether the charge threatened be true or false.—7 W. R., Cr., 28.

2. The making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is — within the meaning of s. 383 Penal Code.—18 W. R., Cr., 17.

See Hookumnamah 1.
Illegal Gratification 8.
Interest 61.
Jurisdiction 9.
Robbery 2.

Factors.

1. Protection of *bonâ fide* pledges of securities by agents under the 5 and 6 Vic. c. 39 extended to India by Act XX of 1844.—(P. C.) 1 W. R., P. C., 43 (P. C. R. 471).

2. Powers and duties of — in making consignments of their principal's goods.—(P. C.) 4 W. R., P. C., 1 (P. C. R. 592).

Fair.

See Assessment 2.

False Charge.

1. What is not a sufficient ground for a — under s. 211 Penal Code.—6 W. R., Cr., 15.

2. Where a man burns his own house and charges another with doing so, he should be convicted under s. 211, not s. 195.—8 W. R., Cr., 65.

3. Destruction between ss. 182 and 211.—8 W. R., Cr., 67; 16 W. R., Cr., 1.

4. S. 211 applies not only to a private individual, but also to a Police Officer who brings a — of an offence with intent to injure.—11 W. R., Cr., 2.

5. In trying a case of — of theft, the decision in the theft case is not sufficient, but evidence should be taken as to the falsity of the complaint of theft.—11 W. R., Cr., 35.

6. In a case of —, the Magistrate gave the accused (A) permission under s. 169 Act XXV of 1861 to prosecute the complainant (B) for an offence under s. 211 Penal Code. The Magistrate tried A's complaint as one under s. 211, but he subsequently proved a charge against B under s. 182 Penal Code and punished him under that section. *Held*, with reference to s. 168 Act XXV of 1861, that the Magistrate was wrong in framing the charge under s. 182 without the previous sanction of the Criminal Court which heard the previous complaint of B.—13 W. R., Cr., 67.

7. Where a charge of theft was reported by the Police to be false,—*Held* that the Magistrate ought to have enquired into the charge of theft and passed some orders upon it, before proceeding under s. 211 Penal Code to enquire into the offence of —.—16 W. R., Cr., 77.

8. What was held to constitute — under s. 211 Penal Code.—19 W. R., Cr., 5.

9. Where the charge is one of instituting a — of an offence with intent to injure, the actual information which the prisoner made at the thannah ought to be given in evidence and form part of the record.—23 W. R., Cr., 32.

See Abetment 2.
Caste 2.
Contempt of Lawful Authority of Public Servant 3.
Criminal Proceedings 19.
Cumulative Sentences 6.
Defamation 4, 5, 12.
Irregularity 8.
Jurisdiction 450.
Limitation (Act XIV of 1859) 229.
Malicious Prosecution.

False Evidence.

1. Contradictory statements without other evidence are not sufficient to convict a person of giving —. If the last statement made be a true one, the witness should not be punished. In case of contradictions, if there is to be a prosecution for perjury, the last statement made upon oath should be shown to be false.—1 R. J. P. J. 244. *See also* 1 R. J. P. J. 65; 9 W. R., Cr., 25, 52.

2. Where a witness who had sworn falsely before the Magistrate retracted his statement before the Court of Sessions, the Court was divided in opinion as to whether any favor should be shown him on this account. In such a case it was held that he could not be convicted of an intention to procure the conviction of the accused.—W. R. Sp., Cr., 10 (2 R. J. P. J. 115).

3. There is nothing in s. 169 Act XXV of 1861 which gives a Judge, not sitting in appeal, any original jurisdiction

FALSE EVIDENCE (*continued*).

to entertain a charge of giving — before another Court. No other Court than that before which — is given can direct a prosecution thereof.—W. R. Sp. 14.

4. In a prosecution for —, there must be some specific charge of making some particular and specific false statement, and some direct and distinct evidence that each specific statement is false.—W. R. Sp. 14; 5 W. R.. Cr., 71, 77; 8 W. R., Cr., 95; 9 W. R., Cr., 25, 54, 58, 66; 17 W. R., Cr., 32, 33; 25 W. R., Cr., 23. *But see* 11 *post.*

5. *Quære.* Whether a case can be transferred from one Court to another under s. 6 Act VIII of 1859 after the evidence has been taken in the former Court.—W. R. Sp. 14.

6. A Judge should not make a prosecution for — depend upon the issue of an appeal.—Sev. 740.

7. A Sessions Judge is competent, under s. 435 Act XXV of 1861, to order the committal of a person accused of giving — after the discharge of such person by the Magistrate, s. 359 notwithstanding.—W. R. Sp., Cr., 3.

8. Where a plaintiff before a Moonsiff came and petitioned the Judge complaining that the Moonsiff had improperly refused to examine his witnesses although informed that they were in attendance, and had dismissed his suit, and the Judge, upon examining the petitioner upon solemn affirmation and finding the charge unproved, ordered proceedings to be taken against the petitioner for giving —,—*Held*, that the Judge had no authority to examine the petitioner upon oath in such a case, and that the oath having been made and the evidence given *coram non judice*, could not form the subject of a prosecution for —.—W. R. Sp.. Cr., 15.

9. A prisoner's intention is immaterial to his conviction, under s. 203 Penal Code, of having given false information respecting an offence committed.—1 W. R., Cr., 18.

But to justify a conviction for giving false information respecting an offence under the section, it must be proved, not only that the person charged had reason to believe that an offence had been committed, but that the offence had actually been committed, and that the accused knew or had reason to believe that the offence had been actually committed.—20 W. R., Cr., 66.

10. A Collector trying a suit under Act X of 1859 has power, under s. 173 Act XXV of 1861, to commit for perjury.—1 W. R., Cr., 47 (4 R. J. P. J. 121).

11. Omission to specify false statement in a charge of — not material.—2 W. R., Cr., 51 (4 R. J. P. J. 359).

12. Corrupt intention in giving — may be inferred from circumstances.—2 W. R., Cr., 63 (4 R. J. P. J. 564).

13. Discussion as to the propriety of a conviction on a charge of —, one of the statements charged having been made to the Police under compulsion.—3 W. R.. Cr., 6 (4 R. J. P. J. 423).

14. A Deputy Collector having committed an agent, under s. 193 Penal Code, for false verification of a plaint, the Assistant Magistrate acted without jurisdiction in having taken security for the appearance of his principals before having obtained the Deputy Collector's sanction to proceed against the principals.—4 W. R., Cr., 7.

15. A charge of — was held unproved. without proof that the statement on which it was founded was given on solemn affirmation under Act V of 1840 instead of on oath. —4 W. R., Cr., 24; 7 W. R., Cr., 13.

16. An enquiry by an Assistant Magistrate with a view to tracing the writer of an anonymous letter addressed to him, charging certain persons with murder, and without reference to the truth or otherwise of the charge of murder, is not a stage of a judicial proceeding in which the giving of — is punishable under s. 193 Penal Code.—5 W. R., Cr., 72.

17. A false statement by a witness as to his position or character ought not to be punished so severely as a false charge on a false claim.—5 W. R., Cr., 95.

18. The discretion vested in a Civil Court, under s. 169 Act XXV of 1861, of sanctioning a criminal charge of —, is one that should be most carefully exercised.—6 W. R., Cr., 11.

So also in cases of perjury and forgery under ss. 18 and 19 Act XXIII of 1861.—7 W. R. 482.

A general sanction under s. 169 is sufficient.—11 W. R. 17.

19. Where a witness intentionally gives — and it is doubtful whether the false statement was made before the Magistrate or the Sessions Judge, the witness may be convicted of giving — upon an alternative finding.—(F. B.) 6 W. R., Cr., 65. *See* 12 W. R., Cr., 11.

20. The deposition voluntarily given before the Sessions Judge is admissible in evidence against the witness, to show the falsehood of his deposition before the Magistrate, anything in s. 32 Act II of 1855 notwithstanding.—(F. B.) *Ib.*

21. A Sub-Registrar is competent for any purpose contemplated by Act XX of 1866, to examine any person; and any statement made by such person before an officer in any proceedings or enquiries under the Act, if intentionally false, renders such person liable to a Criminal prosecution.—6 W. R., Cr., 81.

22. In a case of —, reading extracts from the alleged conflicting statements of the prisoner is not sufficient; the whole deposition should be laid before the jury.—6 W. R., Cr., 92.

23. Nor are written reports of deposition evidence except in the case provided for by s. 369 Act XXV of 1861.—*Ib.*

24. The punishment for — should be in proportion to the character of the offence.—7 W. R., Cr., 37.

And is a matter entirely in the discretion of the Sessions Court.—14 W. R., Cr., 53.

25. Discussions as to the extent of punishment to be passed upon certain ryots who, in a case of criminal trespass brought by an indigo planter, falsely swore that cotton, and not indigo, had been raised on the land in question during the past year.—8 W. R., Cr., 7.

26. Although a Civil Court acted irregularly in sending to the Magistrate for investigation a case of using or attempting to use — when no suit was pending in that Court, yet as the Court had given its sanction to the prosecution of the offence, the Magistrate was held competent, under s. 68 Act XXV of 1861, even without a charge or complaint, to investigate and commit for trial if necessary. —8 W. R., Cr., 9.

27. Where a person makes one statement before the Magistrate. and a directly different statement before the Civil Court, his commitment on an alternative charge, after the consent of the Civil Court has been obtained under s. 169 Act XXV of 1861, is strictly legal.—8 W. R., Cr.. 79.

28. A charge of giving — under s. 193 Penal Code should be precise; and where the accused is charged with giving — on three different occasions, each occasion should form the subject of a distinct head in the charge.—9 W. R., Cr., 14.

29. Before an accused person can be convicted of giving — because he has made two contradictory statements it is necessary to prove that he made the statements which are the basis of the charge.—9 W. R., Cr., 52. *See also* 10 W. R. 37.

30. Documents which were tendered in the civil suit, if relied on in a prosecution for giving —, must be proved in the Criminal Court before they can be received as evidence.—9 W. R., Cr., 58.

31. The verification of an application filed in the civil suit, in which it was stated that the applicant did not sign an alleged deed of compromise. does not subject him to punishment for giving —.—*Ib.*

32. The failure of the Civil Court in a case of — to make a memorandum of the evidence of the accused when examined before it does not vitiate the deposition if the evidence itself was duly recorded in the language in which it was delivered in such Court.—9 W. R., Cr., 69.

33. *Quære.* Whether a party who makes a false verification, when no verification is required by law, has committed an offence under s. 192 Penal Code or s. 24 Act VIII of 1859.—10 W. R., Cr., 31.

34. A charge of giving — under s. 193 Penal Code should state the particular stage of the proceeding in the course of which the prisoner made the alleged false statement.—10 W. R., Cr., 37.

Also the date on which the offence charged was committed, and the Court or officer before whom the — was given.—16 W. R., Cr., 47.

And the statement should be clearly proved to have been made by him.—13 W. R., Cr., 56.

35. Where a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under s. 181 Penal Code, but commit to the Sessions under s. 193.—11 W. R., Cr., 24.

FALSE EVIDENCE (*continued*).

36. Rule as to evidence in a case of giving —.—11 W. R., Cr., 25. *See also* 12 W. R., Cr., 66.

37. How the charge is to be drawn up, according to s. 242 Act XXV of 1861, in a case of — in which it is doubtful which of two statements made by the accused is false. —12 W. R., Cr., 23.

38. When a Civil Court sends an offence under s. 193 Penal Code to a Magistrate for investigation and commitment if necessary, the Magistrate cannot return the case to the Civil Court, nor can the Civil Court, after it has sent a case to the Magistrate, commit it to the Sessions; but the Magistrate should proceed with the case himself.—12 W. R., Cr., 41.

39. In a case of giving — by making contradictory statements, a Court of Sessions cannot, without making further enquiry, commit a person for trial under s. 172 Act XXV of 1861, when both contradictory statements are not made before it.—12 W. R., Cr., 69. *See also* 12 W. R., Cr., 51.

40. A conviction may be had for giving — under s. 193 Penal Code even if the evidence be given in matters not judicial (such as before a Collector acting in his fiscal capacity under Reg. XIX of 1814), but it must be proved that the false statement was made under the sanction of the law.—14 W. R., Cr., 24.

41. The evidence of one witness in cases of — is sufficient to establish the *factum* of the statement charged as being false.—14 W. R., Cr., 53.

42. The words of s. 191 Penal Code are very general and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section if the false statement is intentionally given.—16 W. R., Cr., 37.

43. The issue of a warrant by the Magistrate against a prisoner charging him with giving — was held to be a sufficient sanction under s. 169 Act XXV of 1861 on the part of the Magistrate.—*Ib.*

44. A number of persons cannot be jointly charged with giving — under s. 193 Penal Code. —16 W. R., Cr., 47.

45. The Magistrate before whom the offence of giving — is committed, may himself try and commit the person so offending.—18 W. R., Cr., 15.

The Magistrate's jurisdiction is not barred by s. 473 Act X of 1872, but under s. 471 he must either commit the case himself or send it for enquiry to any Magistrate having power to try or commit for trial.—22 W. R., Cr., 49.

But he has no authority to discharge the accused.—22 W. R., Cr., 83.

46. A statement, untrue to the prisoner's knowledge, made upon oath in the course of a judicial proceeding, amounts to perjury, notwithstanding the fact that the statement itself is immaterial to the matter before the Court.—19 W. R., Cr., 69.

47. It is not necessary under s. 194 Penal Code, that the — which is given should be evidence given in a Court of Justice. Such statement, if made to a Police Officer, would amount to the offence of giving — as defined by s. 191 taken together with s. 118.—20 W. R., Cr., 41.

48. There can be no offence of abetment of giving — unless the person charged with abetment intended not only that the statement should be made but also that the statement should be made falsely.—*Ib.*

49. A charge framed on the model given in Sch. III Act X of 1872, charging the accused upon two charges with having made contradictory statements in the course of judicial proceedings under s. 193 Penal Code, is a good charge; and the Court or jury, if convicting, need not by direct evidence find which of the two statements is false; all that is necessary being that the Court or jury should find that the allegations made in the charge are proved.—(F. B.) 21 W. R., Cr., 72. *See also* 22 W. R., Cr., 2.

50. A charge of giving — should be based strictly upon the exact words used by the person charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction.—23 W. R., Cr., 28.

51. A Magistrate cannot, on the petition of a third party, entertain a charge of false complaint, compel the complainants to appear, and convict them under s. 193 Penal Code.—24 W. R., Cr., 32.

See Amends 7.
Commitment 5, 8, 9.
Criminal Proceedings 2, 7, 8, 18, 20.
Cumulative Sentences 6.
Dismissal of Suit or Appeal 2.
Evidence (Corroborative) 1, 3.
High Court 1, 6, 28, 163.
Jurisdiction 263, 417.
Jury 8, 14.
Pardon 5.
Practice (Criminal Trials) 18, 25, 41, 52.
Will 57.

False Information.

See Contempt of Lawful Authority of Public Servant 8.
False Evidence 9.

False Personation.

Merely presenting a petition for another person is not — of such person under s. 205 Penal Code.—8 W. R., Cr., 80.

See Declaratory Decree 34.
Small Cause Court 38.

Family Custom.

1. To establish a — at variance with the ordinary law of inheritance, it is necessary to show by clear and positive proof that the usage is ancient and has been invariable.—W. R. Sp. 20. *See also* 15 W. R., P. C., 47; (P. C.) 19 W. R. 8; 20 W. R. 154, 247; (P. C.) 26 W. R. 55.

2. The — as to intermarriages may be proved by declarations made by members of the family.—W. R. Sp. 20.

3. A —, where it is ancient, invariable, and established by clear and positive proof, over-rides the usual law of inheritance.—W. R. Sp. 39. *See also* 20 W. R. 154, 247.

4. Cl. 1 s. 27 Reg. IV of 1827 (Bombay Code) imposes no obligation on the Courts to ascertain whether there is family rule or usage, where there is no allegation of such fact in the pleadings, or where the parties have waived resort to the course prescribed by the Regulation.—(P. C.) 4 W. R., P. C., 94 (P. C. R. 268).

5. A settlement of an estate made at the time of the perpetual settlement would not of itself operate to destroy a — regulating the manner of descent, either in the case of a well-established *raj* or even where the origin could not be shown.—(P. C.) 19 W. R. 8.

6. In point of law, a manner of usage of descent of an ordinary estate may be discontinued so as to let in the ordinary law of succession; such family usages being in their nature different from a territorial custom which is the *lex loci* binding all persons within which it prevails.—(P. C.) *Ib.*

7. Where defendant's position as *thakoor* in a branch of the family of the Maharajah of Chota Nagpore was similar to that of the *thakoor* in the eldest branch, he was held entitled to contend that the same custom must be presumed to obtain in both.—19 W. R. 239.

See Custom 5.
Forfeiture 22.
Ghatwals 5.
Hindoo Law 1, 5.
" " (Coparcenary) 102.
" " (Inheritance and Succession) 37, 38, 92, 104.
" " (Migration).
Hosaipore Raj.
Keonghur Raj.
Kolachar.
Rawutpore.
Sheosung Estate.
Tipperah 4.

Family Jewels.

See Hindoo Widow 52.

Farmer.

1. A farm made by Government on account of recusancy of settlement, will be maintained, notwithstanding dispute and decision as to proprietary right in the Courts.—2 W. R. 136.

2. A — may sanction sub-division of holdings, and the zemindar is bound by the acts of the —.—2 W. R. (Act X) 25 (4 R. J. P. J. 60).

3. The word —, as used in Reg. XVII of 1827 (Bombay Code), is used, not as a cultivator of the ground, but as a — of public revenue, a person who would stand between the Government and the ryots as possessors of the ground.—(P. C.) 10 W. R., P. C., 13.

4. The right of a landlord to receive rent from a — depends upon his securing to the latter quiet possession and all proper and lawful means of realizing his rents from the tenants.—15 W. R. 230.

See Damages 4, 35.
Ejectment 67.
Enhancement 20, 71, 156.
Evidence (Estoppel) 26, 100.
Intervenor 47.
Jurisdiction 5, 104.
Khas Mehals 2.
Land taken for Public Purposes 2.
Lease 11, 29.
Limitation 213.
,, (Act XIV of 1859) 119, 308.
Mesne Profits 53.
Middlemen.
Mokurruree Tenure 8.
Occupancy 13, 16, 20, 26, 43, 86.
Plaint 15.
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Father

See Abduction 2.
Advancement 1.
Ancestral Property 10, 11, 12, 13, 14, 15, 16, 19, 20, 21.
Auction-Purchaser (Execution Sale) 30.
Benamee 17, 17*a*, 18, 19.
Certificate 72.
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Endowment 59.
Evidence (Presumptions) 15.
Father's Brother's Daughter's Son.
Fraud 3, 4, 8.
Gift 26, 33, 44, 57.
Guardian 7, 8, 16, 18, 20.
Hindoo Law (Alienation) 4, 5, 6, 10, 11, 12, 13, 14, 16, 17, 21, 22.
,, ,, (Coparcenary) 44.
,, ,, (Religious Ceremonies) 8.
,, ,, (Sale) 1, 2, 3, 4, 8, 10, 13, 17.
Illegitimate Child 2, 8.
Jurisdiction 67.
Lease 47.
Limitation 110.
,, (Act XIV of 1859) 162.
,, (Act IX of 1871) 18, 14.
Mahomedan Law 86.
Maintenance 21, 22.
Marriage 41.
See Misjoinder 2.
Onus Probandi 139, 164.
Partition 24*b*.
Practice (Execution of Decree) 58, 260.
Relinquishment 18, 19.
Sale 284.
Self-acquired Property 1, 6, 7.
Will 51.

Father's Brother's Daughter's Son.

See Brother's Daughter's Son.
Hindoo Law (Inheritance and Succession) 3.

Father's Uncle.

See Hindoo Law (Inheritance and Succession) 59, 73.

Feræ Naturæ.

See Right of Property 9.

Ferry.

1. The mere fact of being the owner of both banks of a river does not give the right of —.—2 W. R. 286.

2. The right to ply a — includes a right to ply it even when, owing to the effects of season and increase of water, there may be occasion to start from, or land on, a part of the river-bank not included in the land taken for the —.—5 W. R. 195.

3. Cl. 2 s. 13 Reg. VI of 1819 only applies where there has been an *accident*. When the Magistrate thinks that a — is improperly kept and is in a dangerous condition, he should proceed under s. 4.—7 W. R., Cr., 32.

4. Proprietary rights in a private — do not admit of another — being run within such a distance as to be practically on the same line.—16 W. R. 281.

5. Preventing persons from crossing in a person's — and driving his men away, amount to dispossession.—*Ib.*

6. A rival — cannot be set up so as to interfere with the proprietary rights in an existing —, *i.e.* under circumstances involving direct competition with such —.—22 W. R. 296.

7. The right to a — ghat cannot follow the starting-point of the — wherever it may be carried by a change in the course of the river, unless the new position is within the possessor's own land.—25 W. R. 53.

See Jurisdiction 44, 251, 393.
Lease 78.
Water 1.

Fieri Facias (Writ of).

See High Court 176.
Mortgage 172.
Practice (Execution of Decree) 125
Sheriff 5.

Fine.

1. The Court has no power to dispose of a — inflicted upon a prisoner. Such power exists in Government alone.—1 Hyde 282.

2. An order of — quashed because the answers of the parties fined were not taken to the offence charged.—2 W. R., Cr., 58 (4 R. J. P. J. 367).

And no information laid against them.—23 W. R., Cr., 63.

3. The Sessions Judge should record under what section or on what grounds he orders a portion of the — inflicted on prisoners convicted of dacoity to be made over to the complainant.—2 W. R., Cr., 58 (4 R. J. P. J. 367).

4. Not awardable as compensation in cases under chap. XIV of the Penal Code.—3 W. R., Cr., 60.

5. Imprisonment, suffered in default of payment of —, does not exempt the property of the offender from distraint and sale.—3 W. R., Cr., 61.

6. Additional imprisonment, in default of payment of —, must be rigorous and not in transportation.—7 W. R., Cr., 31.

Fine (*continued*).

7. The description of — which it was the object of s. 63 Act XXV of 1861 to prohibit was a — impossible or difficult for the accused person to pay, or wholly disproportioned to the character of the offence.—7 W. R., Cr., 87.

8. *Quære*. Whether s. 63 has any application to a — inflicted by a Magistrate.—*Ib*.

9. When a Judge (or other officer) who sentences an offender to — and imprisonment in default of the —, does not also direct levy of the — by distress and sale if not paid, the successor of the Judge (or officer) may, under s. 61 Act XXV of 1861, buy the — by distress and sale within the time prescribed in s. 70 Penal Code.—(F. B.) 9 W. R., Cr., 50.

10. An order directing payment to a witness of a portion of the — levied on an accused held to be illegal, in the absence of proof that the witness suffered any loss owing to the conduct of the accused.—9 W. R., Cr., 58.

11. Under s. 3 Act XXIX of 1867, a person once fined for not taking out a license, is not liable to a second — or to any further demand for the tax.—9 W. R., Cr., 64.

12. A Subordinate Magistrate of the first class can deal with offences provided for by a Special Law (in this case Act III of 1863 B. C.) and sentence to imprisonment in lieu of — for more than 6 weeks when the punishment awardable is — only; s. 67, and not s. 65 Penal Code, being applicable to such a case.—10 W. R., Cr., 30.

13. Not awardable as compensation under s. 44 Act XXV of 1861 to the heirs of a person who has been killed.—10 W. R., Cr., 39.

14. A sentence of — cannot be passed where a conviction has been had under two sections of the Penal Code, in one of which only an alternative sentence of imprisonment or — is allowed.—11 W. R., Cr., 39.

15. The — awarded as compensation under s. 44 Act XXV of 1861, should be a part of the sentence and order, and should be found upon a statement of loss, damage, or expenses ascertained at the trial.—11 W. R., Cr., 53.

16. Where a Magistrate dismissed a complaint on default under s. 259 Act XXV of 1861, and fined the complainant under s. 270, the — was remitted and ordered to be refunded. —17 W. R., Cr., 6.

17. The provisions of s. 61 Act VIII of 1869 are not applicable to fines and forfeitures under Act XXI of 1856. —17 W. R., Cr., 7.

18. The imposition of a daily — after the date of conviction is an adjudication of an offence not yet committed and is therefore illegal.—18 W. R., Cr., 44; 20 W. R., Cr., 61; 21 W. R., Cr., 32; 25 W. R., Cr., 6.

19. Where a person convicted of stealing a horse was sentenced to imprisonment and —, and the Magistrate, relying on s. 418 Act X of 1872 and the rule of English law protecting a *bonâ fide* purchaser in market overt, directed the horse to be restored to such a purchaser and the — to be paid to the complainant, so much of the order as directed payment of the — to complainant was set aside as not warranted by s. 418, as such an order could only be made under s. 308.—20 W. R., Cr., 38.

See Amends.
Bailiff 1.
Dacoity 8.
Damages 105.
Dismissal of Suit or Appeal 1.
Excise 1.
High Court 178.
Jurisdiction 26, 211, 327, 468.
Municipal 1, 7, 11, 12, 20, 26, 29, 32.
Nuisance 16.
Practice (Appeal) 53.
Receipt 5.
Sale Law (Act XI of 1859) 28.
Special Appeal 68.
Stamp Duty 11, 15, 19, 25, 41, 63, 72, 77, 81, 82, 87, 90.
Summary Trial 4.
Theft 1, 12.
Witness 20, 40.

Firm.

See Hindoo Law (Coparcenary) 100, 101.
Limitation (Act IX of 1871) 86.
Occupancy 104.
Partnership 1, 7, 8, 13, 24, 26, 28.
Plaint 10.

Fishery.

See Julkur.

Fixtures.

See Building 6.

Forbearance.

See Interest 14.

Foreigners.

See Practice (Criminal Trials) 8.

Foreign Judgment.

See Evidence (Estoppel) 84.
Limitation 118.
Practice (Execution of Decree) 166, 191.

Foreign Law.

See Limitation 117.

Foreign Territory.

See Independent States.
Jurisdiction 420, 453.
Limitation 70.
Practice (Commissions) 17.
,, (Execution of Decree) 26, 166.
Recorders 2.
Security 12.
Service 3.
Summons 19.

Forfeiture.

1. The — of a rebel's property under Act XXV of 1857, does not include the rights of a decree-holder who has *bonâ fide* attached the property in execution of his decree.—2 Hay 117 (Marshall 259).

2. A decree-holder is not entitled to have his decree satisfied by sale of a rebel's property which has been confiscated by Government, unless he can show that the property was attached in the execution of his decree before the confiscation.—2 Hay 562.

3. In order to bar a suit under s. 9 Act XXV of 1857, there must have been a distinct and formal seizure under an award of —.—Sev. 279.

4. In a suit for the *mohasil* or profits of the Jugdispore Jungle which had been seized as the property of Koer Singh, an adjudged rebel but afterwards released,—*Held* that the plaintiffs had not the vestige of a title to the proprietary right in the soil of Jugdispore, and had not shown themselves to have been actual proprietors in enjoyment of the *mohasil* so as to be able to maintain an action for damages on account of injury to such *mohasil*; that the clearing of the jungle was justified as well under the principle that no action for damages arising out of acts done by order of military authorities *flagrante bello* can be entertained in the Civil Courts, as by the special indemnity contained in s. 2 Act XXXIV of 1860; that public policy forbade that the defendants should be stayed in reclaiming a large tract of improvable land in order that the plaintiffs might enjoy a merely nominal advantage from its remaining unimproved; and that if the plaintiffs could have obtained a decree for damages at all, it would have been only for a sum commensurate to the injury which they might have

FORFEITURE (*continued*).

shown to have suffered in respect of the loss of their *mohasil* or profits.—*Ib.*

5. A rebel tried, convicted, and executed under the provisions of Acts XI and XIV of 1857, was held, upon his conviction, to have forfeited all his property, although his sentence contained no express order of —.—Sev. 594.

6. The suits of the parties claiming portions of the above property were held barred under s. 20 Act IX of 1859.—*Ib.*

7. Act XXV of 1857 was intended to meet the cases of those persons who were accused of offences for which they would be liable to — of property, but who might have been killed or died, or escaped out of the British territories before they had been convicted of the offence, or could not after diligent search be found.—*Ib.*

8. Where a claim is made to the property of a rebel who escaped by flight before trial, the case comes under s. 2 Act XXV of 1857 and is governed by the limitation prescribed by s. 9.—Sev. 665.

9. When the aforesaid party was proclaimed a rebel and his property adjudged to be forfeited to the State, he had a reversionary interest in the estate left by his father; and all that the Government could attach, confiscate, and sell of that estate was the right and interest of the rebel contingent upon his mother's death.—*Ib.*

10. Power of the Governor-General under Reg. XI of 1796 to pronounce an order of confiscation against absconded offenders.—(P. C.) 7 W. R., P. C., 47 (P. C. R. 186).

11. Where a forfeiture was declared against three out of four brothers constituting a joint Hindoo family,—*Held* that the forfeiture did not enure for the benefit of the fourth brother, who was entitled to a fourth share in all the ancestral property of the family, and that the widow of the ancestor was also entitled to maintenance.—*Ib.*

12. Reg. XI of 1796, being a highly penal statute, should be construed strictly. As it makes no express provision for the case of joint proprietors of land or persons jointly holding a sudder farm of land, in the absence of clear words indicating such an intention, it cannot be assumed that the legislature intended to authorize the confiscation of the property of any person other than the delinquent.—(P. C.) 7 W. R., P. C., 18 (P. C. R. 673).

13. A sale under the above Regulation does not extinguish under-tenures or incumbrances created by the delinquent or those through whom he claims.—*Ib.*

14. An auction-purchaser of the rights and interests of rebels, whose property has been confiscated, is not entitled to the shares of innocent sharers holding jointly.—1 W. R. 208.

15. Forfeiture of inheritance.—*See* Hindoo Widow 92; Marriage 15; 17 *post.*

16. A sentence of — under s. 62 Penal Code should only be inflicted for offences of the most atrocious kind or committed under the most aggravated circumstances.—12 W. R., Cr., 17.

17. Effect of Act XXI of 1850 in preventing — of inheritance. —14 W. R., O. J., 23.

18. The procedure in regard to the seizure and attachment of property under Act XXV of 1857 and the adjudication of claims to such property under Act IX of 1859, pointed out.—14 W. R. 114.

19. A seizure within the meaning of s. 20 Act IX of 1859 is such a taking possession of the property forfeited as is referred to in s. 7 Act XXV of 1857, *i.e.* not merely formal but actual.—*Ib.*

20. The property of a judgment-debtor convicted of an offence under Act XI of 1857, which has been attached intermediately between the time of commission of the offence and the time of conviction, is property forfeited to the Crown under s. 3 Act XXV of 1857. The — relates back to the time of commission of the offence.—17 W. R. 80.

21. S. 20 Act IX of 1859, which provided for suits brought in respect of property forfeited to the Government as the property of rebels, was intended to be of a general nature affecting claims to such property before whatever Court prosecuted, and not only claims prosecuted before the Commissioners established by the Act.—(P. C.) 21 W. R. 318.

22. Where the property of a rebel subsequently sentenced to death and executed was forfeited to the Government and a suit was instituted on behalf of his infant son for the restoration of the estate (1) because it had been granted towards maintaining the title and dignity of the Thakoor and was inalienable, and (2) because it was subject to the Mitacshara law modified by the family custom of primogeniture, and the plaintiff became on his death a co-sharer with his father,—*Held* that the grant being for maintenance, and the descent being to the heirs male, did not make the estate inalienable; so long as there was an heir male, the grantor or his heirs could not resume such an estate, but a particular law or custom was necessary to convert an estate which was conditional upon there being one heir male into an estate which could not be aliened;—*Held* also that the Mitacshara law by which each son had by birth a property in the ancestral estate, was inconsistent with the custom that the estate was impartible and descended to the eldest son, and was not applicable to this estate; and that the suit was barred by s. 9 Act XXV of 1857, which contained no exception in favor of infants, and that the right of action having been extinguished was not revived by the repeal of the Act.—22 W. R. 17.

See Absconding Offenders 1, 2, 3, 5, 11.
Confiscation.
Contractor 4.
Ejectment 10, 42, 48, 107.
Enam Grants 2.
Endowment 72.
Escheat.
Hindoo Law (Coparcenary) 102.
,, Widow 43, 92.
Instalments 3.
Joint-Stock Company 5.
Khas Mehals.
Landlord and Tenant 16, 42.
Lease 11, 63, 64, 68, 70, 77, 84.
Limitation 43, 67, 234.
Mokurruree Tenure 4.
Occupancy 68.
Pre-emption 13.
Putnee Talook 13, 16, 18, 20.
Recognizance 16.
Re-entry 5.
Rent 16, 39.
Sale 95, 144.
Salt 1, 2.
Settlement 27.
Streedhun 1.
Tanjore.
Zur-i-peshgee Lease 34.

Forgery.

1. The — of a *copy* of a document comes within the definition of — as given in s. 463 Penal Code.—W. R. F. B., 71 (2 Hay 236; Marshall 270).

2. Plaintiff sued on a kuboolcut which the Court pronounced to be a —. *Held* that notwithstanding an allegation by the defendant that he had paid all his rent to the plaintiff, the suit was properly dismissed, without investigation as to whether rent was due in respect of any other obligation.—2 Hay 666 (Marshall 561).

3. A person having been convicted of uttering forged documents, his plea that he was not likely to utter forged documents on account of moneys which he intended to pay over and which he did pay before any stir was made in the matter, was held in appeal to be of no avail.—1 R. J. P. J. 248.

3*a*. The word "proceedings" in ss. 170 and 171 Act XXV of 1861 is not restricted to suits and appeals, but applies to all miscellaneous enquiries.—Sev. 765.

4. Where the first Court found the document on which the plaintiff relied to be a — and dismissed the suit, the Lower Appellate Court would not decree the case without trying the issues as to the genuineness of that document.—W. R. Sp. (Act X) 54 (2 R. J. P. J. 218). *See also* 6 W. R. 64.

FORGERY (*continued*).

5. In a conviction under s. 474 Penal Code, the guilty intent must be proved, not inferred.—W. R. Sp., Cr., 12.

6. A fraudulent alteration of a Collectorate Challan is a — under s. 467 Penal Code.—W. R. Sp., Cr., 22.

7. A Deputy Magistrate cannot commit a person for — under s. 170 Act XXV of 1861 when the Civil Court has sanctioned his committal under s. 169, unless with the express sanction of that Court.—2 W. R., Cr., 31 (4 R. J. P. J. 167).

8. A Judge of a Small Cause Court may enquire into a charge that a decree was passed by his predecessor in plaintiff's favor without plaintiff's cognizance and on a forged document.—4 W. R., Cr., 25.

9. Procedure in a case of — committed before a Civil Court before 1st January 1862, with reference to s. 4 Act XVII of 1862 and Act I of 1848.—5 W. R., Cr., 4.

10. So also in a case of filing a forged *vakalutnamah*.—5 W. R., Cr., 43.

11. A person who consents to act under a *mookhtarnamah* and attaches his name thereto in token of such consent, does not thereby become a maker of the *mookhtarnamah*, or a forger if it turns out to be forged.—5 W. R., Cr., 70.

12. A conviction may be had, under ss. 466 and 471 Penal Code, for using as genuine a forged document purporting to be made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon.—5 W. R., Cr., 96.

13. When a Civil Court sends a person before a Magistrate on a charge of —, it is competent to the Magistrate to commit the prisoner for trial on a charge either of —, or of using as genuine a false document, or of abetting —.—6 W. R., Cr., 20.

As to abetting.—15 W. R. 352.

14. A person may be convicted of using a forged document, whether he produced a copy or the original.—6 W. R., Cr., 41.

15. Unauthorizedly signing a *vakalutnamah* in the name of co-decreeholders and delivering it to a vakeel with instructions to file a petition stating that the debt had been satisfied and praying that the case may be struck off the file, is — under s. 463 Penal Code.—6 W. R., Cr., 78.

16. Where a prisoner produced as evidence an account-book, one page of which had been fraudulently abstracted and another substituted for it, he was held not guilty of the offence of attempting to use, as genuine, fabricated evidence, unless he knew of the — when the book was tendered, and intended to use the forged evidence for the purpose of affecting the decision on the point at issue.—7 W. R., Cr., 23.

17. It must be proved that the accused practised deception so as to prevent a person from knowing the nature of the document before the accused can be found guilty under s. 464 Penal Code.—9 W. R., Cr., 20.

18. S. 170 Act XXV of 1861 refers only to cases where a forged document has been put in evidence in a Civil or Criminal Court; in other cases, a Magistrate is competent *proprio motu* to enquire into allegations of —.—10 W. R., Cr., 5.

19. A conviction for — cannot be had against a person if the — was not committed by his own hand but by the hand of another.—10 W. R., Cr., 7.

20. The simple making of a false document constitutes — under s. 463 Penal Code, and it is not necessary that it should be issued or made known to the injury of a person's reputation, either by being presented in Court or shown to any person. A false document may be made in the name of a fictitious person.—10 W. R., Cr., 61.

21. Where a draft petition was prepared with the intention of being used as evidence of a matter, it was held to fall within s. 29 Penal Code; and as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469.—*Ib.*

22. Presenting a forged deed of divorce for registration and obtaining registration is "using" within the meaning of s. 471 Penal Code.—11 W. R., Cr., 15.

23. A Collector to whom a forged document is tendered for a new stamp under cl. 2 s. 50 Act X of 1862, does not sit as a Court, Civil or Criminal, within the meaning of s. 170 Act XXV of 1861.—11 W. R., Cr., 48.

24. Where it was held under s. 473 Penal Code that there was a complete and separate offence of — in respect of each of several seals of different descriptions found in the possession of the accused with intent to commit —.—13 W. R., Cr., 16.

25. Before a petition of compromise presented by a pleader in due course, and which operated to stay further proceedings in execution, can be declared a —, evidence must be taken.—17 W. R. 402.

26. When a deed has been proved and attested in due form, a Court is not justified (without any evidence of its fabrication) in finding from such circumstances as inadequacy of the consideration money that it was a —.—20 W. R. 181.

27. Where a person asks to have a deed, which is said to have been executed by him, declared to be a —, he ought to present himself for examination.—*Ib.*

28. Where a fraudulent misrepresentation in writing was held not to amount to — under s. 464 Penal Code.—21 W. R., Cr., 41.

See Ameen 3.
Appeal 119.
Autrefois Acquit 2.
Criminal Proceedings 2, 6.
Declaratory Decree 23, 27, 34, 49.
Ejectment 16, 18.
Enhancement 52, 97, 101, 154.
Evidence 29, 30.
" (Documentary) 67.
" (Estoppel) 1, 41, 44, 101.
False Evidence 18.
High Court 28.
Hoondee 15, 16.
Judgment 14.
Jurisdiction 39, 42, 192.
Occupancy 29, 33, 34.
Onus Probandi 119, 181.
Practice (Appeal) 45.
" (Parties) 36.
Registration 90, 105, 136.
Reversioner 14.
Special Appeal 23.

Form of Action.

See Contribution 26.
Co-sharers 38*a*.
Damages 103.
Declaratory Decree 5.
Enhancement 225.
Practice (Parties) 1.

Fraud.

1. A party cannot set up his own — to invalidate his own deed or contract.—2 Hay 499. *See also* 7 W. R. 118, 11 W. R. 313, 15 W. R. 273.

2. The fact of A taking a lease from B, to whom the lands leased were transferred by C in — of C's creditors, is no proof that A was a party to that —. C's defrauding his creditors is no reason for allowing B to defraud A.—1 R. J. P. J. 43.

3. A son and representative cannot benefit by his father's —.—Sev. 860.

4. Where a father, to defraud his creditors, tranfers property to his sons, and permits them to put forward claims inconsistent with his own, they are entitled to say that he cannot afterwards recover it from them.—W. R. Sp. 265 (L. R. 43). *See* 13 W. R. 87.

5. A decree of an Appellate Court, obtained after a compromise not to prosecute the appeal, is an adjudication obtained in effect by —.—(P. C.) 4 W. R., P. C., 46 (P. C. R. 378).

6. In considering a case of alleged — in the purchase of an estate, it is material to enquire what relation the purchase-money paid bore to the value of the estate.—(P. C.) 7 W. R., P. C., 10 (P. C. R. 651). *See* 10 W. R. 321.

7. Remedy of judgment-debtor against a decree obtained

FRAUD (*continued*).

by fraud and personation.—1 W. R., Mis., 29 ; 14 W. R. 299. *See also* 22 W. R. 213.

8. A son suing to regain property cannot allege his father's — as his cause of action.—3 W. R. 30.

9. A party selling *benamee* in — of creditors cannot allege or plead his own — ; nor can his representatives or private purchasers from him do so, unless they are themselves the defrauded parties, and seek relief from the —.—3 W. R. 92, 221. *See* 5 W. R. 177 ; 9 W. R. 593 ; 11 W. R. 19 ; 12 W. R. 155, 261 ; 13 W. R. 87 ; 14 W. R. 95 ; 19 W. R. 145.

10. *Benamee* deeds executed in — of creditors, when good, and when not good, as between the parties and their heirs.—4 W. R. 72.

11. A person cannot recover under a deed of sale in — of creditors, even against a party to the —, except it may be against the person who executed the deed.—6 W. R. 98.

12. The mere non-payment of a debt does not necessarily prove collusion between the debtor and his vendor to defraud the creditor, and — must not be presumed without good and probable grounds.—6 W. R. 235.

13. The mere taking a *benamee* lease, unaccompanied by any other circumstances of suspicion, does not *per se* constitute fraud.—6 W. R. 283.

14. A suit founded on an admission of —, and seeking protection from the consequences of that —, cannot be maintained.—6 W. R. 287. *See* 13 W. R. 87.

15. An allegation of — may form a ground for a suit to set aside a judgment when the answer was alleged to have been set up without the party's knowledge or in — of him, but it cannot form a valid ground of appeal.—8 W. R. 29.

16. A party to a suit who bases his claim on an allegation of — risks success with the charge.—8 W. R. 461.

17. It is a power inherent in every Court of justice to recall an order obtained from it (in this case the grant of a certificate under Act XXVII of 1860) by — or misrepresentation.—9 W. R. 394. *See also* 13 W. R. 160.

So also in the case of recall of a certificate under Act XL of 1858.—13 W. R. 256.

18. If a gross — is being practised on a Court in the matter of a minor, and if the object of that — be to evade an order of the Court directing the minor's guardians to account, any person who appears before the Court and exposes the — and undertakes to prove it, has a *locus standi* in Court and has a right to be heard.—10 W. R. 372.

19. The principle of law which would prevent a plaintiff from asserting the invalidity of a *benamee* deed, applies just as strongly to the defendant asserting its validity.—11 W. R. 185.

20. A defendant is at liberty to show the real circumstances under which an agreement was entered upon, although it was entered upon by plaintiff and his own (defendant's) ancestor in furtherance of a —.—19 W. R. 238.

So also where the document was executed by defendant for his own advantage under false pretences.—25 W. R. 40.

21. A party succeeding to the possession of property is not entitled to ask the assistance of the Court either to rectify deeds of transfer fraudulently effected by his predecessor, or to ask that these documents should be treated as void at law.—19 W. R. 270.

22. Mere speculation and probability will not in law support a finding of —. It is incumbent on a party putting forward a charge of collusion with a view to defraud, to support it by evidence to a reasonable extent.—22 W. R. 124, 25 W. R. 133.

See Acquiescence 1.
Adjustment 6.
Ancestral Property 11.
Assignment 7.
Attorney and Client 10, 16.
Auction-Purchaser (Execution Sale) 10.
Benamee.
Bond 25.
Breach of Contract 18.
Certificate 97.
Champerty 5.
Collusive Decree 1, 2.
Compromise 3, 25.
See Contract 18, 45.
Costs 15.
Damages 59, 98.
Declaratory Decree 3, 20, 49.
Decree 25.
Deed 1, 4.
,, of Sale 3.
Endowment 59, 75.
Evidence (Admissions and Statements) 6.
,, (Estoppel) 5, 10, 13, 29, 34, 49, 118.
,, (Oral) 7, 8, 18, 19.
,, (Presumptions) 4, 10, 15.
Ex-parte Judgment or Decree 9, 31.
Forgery 28.
Fraudulent Removal or Concealment.
Ghatwals 31.
Gift 34.
Heir 5.
High Court 6, 25*a*, 154.
Hindoo Law (Adoption) 19.
,, ,, (Coparcenary) 18.
,, Widow 44, 61, 88.
Husband and Wife 9, 11, 12, 19, 27, 45.
Insolvency 8.
Interest 109, 111.
Jurisdiction 268, 276.
Kidnapping 1, 2.
Lakheraj 14.
Lease 36, 67.
Limitation 25, 73, 156, 166*a*, 203, 220, 229.
,, (Act X of 1859) 19.
,, (Act XIV of 1859) 21, 26, 92, 98, 126, 200, 207, 243, 314, 318, 325, 326.
,, (Act IX of 1871) 41, 42.
,, (Reg. II of 1805) 1, 2, 9.
Marriage 89.
Mesne Profits 23, 46.
Minor 6.
Mortgage 95, 96, 103, 106, 115, 146, 157, 195, 201, 205.
Occupancy 64.
Onus Probandi 5, 29, 43, 56, 80, 82, 123, 134, 167, 168, 173, 178, 181, 183, 192, 215, 221, 225, 255, 258*a*, 264.
Partition 8.
Partnership 7, 11.
Plaint 1.
Practice (Attachment) 65*a*.
,, (Execution of Decree) 39, 124, 178, 227, 248.
,, (Possession) 31, 34.
,, (Review) 95.
Principal and Agent 81.
,, ,, Surety 26.
Privy Council 61.
Putnee Talook 18, 45, 90, 95.
Registration 15, 49, 52, 58.
Reversioner 23.
Right of Property 5.
Sale 1, 8, 9, 39, 64, 65, 66, 73, 87, 107, 118, 132, 157, 157*a*, 158, 168, 182, 185, 235, 288.
,, Law 8*a*.
,, ,, (Act I of 1845) 5, 6.
,, ,, (Act XI of 1859) 3.

FRAUD (*continued*).

See Secret Transfer.
Small Cause Court 38.
Special Appeal 97.
Statute of Frauds.
Trade Mark 1, 2.
Vendor and Purchaser 7*b*, 26, 33, 35, 43, 47, 57, 64, 70.
Voluntary Payment 3.

Fraudulent Removal or Concealment.

1. Where a Deputy Magistrate, considering that the attachment of a carriage in execution of a decree of a Civil Court was illegal because it was placed in the custody of the judgment-debtor's husband, and that the husband had acted fraudulently in recovering and concealing the wheels and axles of the carriage on its subsequent distraint for arrears of municipal tax, convicted him of an offence under s. 424 Penal Code, the conviction was set aside as improper.—8 W. R., Cr., 17.

2. Fraudulent removal of property with intent to prevent its being taken in execution of a Collector's decree, is punishable under s. 206 Penal Code and not under s. 115 Act X of 1859.—10 W. R., Cr., 46.

3. The offence which s. 424 Penal Code contemplates is a — of property from the place where it is deposited, whether the fraud is intended to be committed on creditors or partners.—21 W. R., Cr., 10.

See Damages 98.
Practice (Execution of Decree) 154.

Freight.

1. Right of the owner of the vessel to keep possession of the cargo until payment of —.—(O. J.) 17 W. R. 49.

2. Letter of guarantee given by holders of bills of lading for "payment of the balance of the — due under the charter-party less any claim for short delivery," how construed.—(O. J.) *Ib.*

See Contract 82.

Fresh Suit.

1. The parties having acted under a misapprehension of the law, leave was given to them to bring a new suit within 3 years.—(P. C.) 6 W. R., P. C., 50 (P. C. R. 155).

1*a*. Permission under s. 97 Act VIII cannot be given where final judgment has been pronounced.—2 W. R. 297, 24 W. R. 23.

2. In ordinary cases, and in the absence of special cause, a — on a decree is not the proper remedy.—1 W. R., S. C. C., 7. *See also* 9 W. R. 399, 13 W. R. 161.

3. Civil Courts have no power to sanction the bringing of a — except under s. 97 Act VIII.—14 W. R. 472.

4. Where plaintiff had sued, and the issues were laid down, for separate possession, the decree for joint possession was set aside with leave to plaintiff under s. 97 Act VIII to bring a — for joint possession.—17 W. R. 164.

5. Where a plaintiff having under s. 97 Act VIII asked to withdraw his suit and bring a —, and the Moonsiff, in granting the prayer, inadvertently omitted to record the permission for a —, and subsequently made an order giving the permission,—*Held* that there was nothing to prevent his passing such an order, it being in the nature of a review of the original order.—20 W. R. 401.

6. Where an Appellate Court, instead of deciding upon an appeal, refers the appellant to a —, the order, whether right or wrong, if accepted by the parties, is binding upon them.—20 W. R., 440.

See Arbitration 24, 87.
Bond 20.
Compromise 28.
Co-plaintiffs 1.
Damages 62.
Default 1, 12, 18, 15.
Evidence (Estoppel) 81.
Jurisdiction 488.
Limitation (Act LIII of 1860) 2.
Lis Pendens 5.
Mesne Profits 60, 80.
Money Decree 1, 4.
Practice (Execution of Decree) 88.
Putnee Talook 80.
Rent 98.
Res Judicata 12, 55, 88.
Withdrawal of Suit or Appeal 1, 9, 10.

Full Bench.

1. Where a — found that the question referred to it did not arise, and being of opinion that there was no ground for special appeal, dismissed the appeal.—W. R. F. B. 129 (Sev. 88*f*).

2. Where a — did the like under similar circumstances and also determined the point referred.—5 W. R. 59.

3. Where a question was referred to a — with reference to the power of a Divisional Bench of the High Court on the Civil side, and it was argued and decided with reference to the power of the Court both on the Civil and Criminal sides.—5 W. R., Mis., 25.

4. Where a — did not determine the point referred, because it did not arise in the case. -7 W. R. 135; 13 W. R., F. B., 82; 15 W. R., F. B., 21. *See* (F. B.) 18 W. R., Cr., 50.

5. Decisions of — are prospective and not retrospective. —7 W. R. 105, 9 W. R. 102. *But see* 7 W. R. 408, 20 W. R. 351.

6. A — ought to answer any question referred for its opinion by a Division Bench, when such question properly arises out of a case before the Division Bench.—(F. B.) 8 W. R. 428.

7. It is not the practice of the High Court to refer conflicting discussions on questions of fact to a —.—9 W. R. 158.

8. There is no rule or authority which makes it imperative on the Division Benches to follow every ruling of a — when the point subsequently decided by that ruling was never pleaded in the Court below. -11 W. R. 430.

9. The word "shall" in the High Court's Rule of Practice of July 1867 was considered as merely directory and not imperative; and therefore where the difference was not only between one Division Court and another on a point of law, but that other Court's ruling was in conflict with the rulings of other Division Courts and with the *obiter dictum* of a —, a reference to a — was considered not necessary.—21 W. R. 132.

10. Where a Division Bench claimed the right to express its own opinion contrary to that of another Bench without a reference to a —.—22 W. R. 288.

See High Court 55, 66.
Privy Council 36.
Practice (Review) 49, 57, 70, 101.
Remand 41.

Gambling.

1. Lottery tickets are instruments of gaming within the meaning of ss. 1 and 4 Act III of 1867.—12 W. R., Cr, 31.

2. A conviction under Act II of 1867 (B. C.) was set aside, the Government notification extending the Act to Jungipore not having been duly published in the Government Gazette.—18 W. R., Cr., 41.

See also (as regards extension of the Act to Berhampore). —21 W. R., Cr., 23.

See Hindow Widow 81.
Time Bargain.

Gantee.

See Co-sharers 61.
Jurisdiction 101.
Sale 67.
Vendor and Purchaser 14*b*.

Garden.

See Auction-Purchaser (Revenue Sale) 22.
Enhancement 24, 57, 74.
Hindoo Law (Coparcenary) 93.

Gazette (Government).

See Auction-Purchaser (Revenue Sale) 17.
Evidence (Documentary) 8, 94.
Gambling 2.

General Average.

See Contribution 10*a*.

Ghats.

See Jurisdiction 24.

Ghatwals.

1. The — in Beerbhoom are, under s. 2 Reg. XXIX of 1814, possessed of estates of inheritance without the power of alienation and enduring so long as they perform all the obligations of service and payment of rent to Government incident to their tenure. A perpetual sub-lease granted *bonâ fide* to a party by a ghatwal is good not only during the tenancy of the grantor but (after his decease) of his heirs also. The only mode in which the heirs (or those acting on their behalf) can legitimately set aside the alleged act of their ancestor, is not by summary dispossession but by a regular suit questioning the title set up.—W. R. Sp. 34 (1 Hay 200; Marshall 117). *See* 15 W. R. 38.

2. The power of Government under s. 5 Reg. XXIX of 1814 to transfer the tenure of a defaulting ghatwal is not put an end to by his offer to pay up the arrears before the tenure is actually made over to another person.—1 Hay 446, 14 W. R. 203.

3. Act X of 1859 does not apply to a suit by a putnee talookdar against a ghatwal for lands held in excess of his tenure. In such a case the question is the title to the lands, and that is not a question for the decision of the Revenue Courts.—1 R. J. P. J. 221 (Sev. 850).

4. Where certain — had for a long time paid a quit-rent for their lands,—*Held* that the plea of the Government, that they performed Police duties also, could not be any ground for abating the zemindar's claim as the rightful recipient of those rents, but that it was for the Government to sue to have the lands exempted altogether from the zemindar's demand if the lands were excluded from the decennial settlement.—Sev. 96.

5. Succession to ghatwalees is regulated by no rule of *kolachar* or family custom, nor by the Mitacshara law, but solely by the nature of the ghatwalee tenure which descends undivided to the party who succeeds to, and holds, the tenure as ghatwal, and who may be a female.—W. R. Sp. 39. *See also* 20 W. R. 154.

6. The lands of the — of Kurruckpore are not capable of alienation by private sale or otherwise, nor liable to sale in execution, except with the consent of the zemindar and his approval of the purchaser.—W. R. Sp. 249, 11 W. R. 292.

7. The ghatwalee lands in the zemindaree of Kurruckpore are not liable to resumption and re-assessment under cl. 4 s. 8 Reg. I of 1793. The Government having persisted in their claim after several decisions against them by their own officers acting as Judges, were adjudged liable to pay all the costs of the case.—(P. C.) 4 W. R., P. C., 77 (P. C. R. 248).

8. Competency of Special Commissioners under Reg. III of 1828 to adjudge mesne profits received from the — of Kurruckpore during resumption.—(P. C.) 1 W. R., P. C., 20 (P. C. R. 535).

9. The Civil Courts cannot interfere to reinstate a ghatwal, who has been dismissed by the Police authorities, in the land which he formerly held as ghatwal. The right to possess the land depends on the tenure of the office.—1 W. R. [illegible]. *See also* 11 W. R. 180.

10. The mere recital in a plaint that the land in question is held under a ghatwalee tenure and is not *mâl*, will not give the Civil Court jurisdiction when the prayer of the plaint is for the reversal of an Act X decision and for the refund with damages of the money recovered in execution.—2 W. R. (Act X) 42.

11. In a suit for the reversal of a survey award demarcating certain lands as ghatwalee and as held under the Government, adverse possession and limitation can be pleaded by the Government and the —, whether as regards uncultivated or cultivated lands.—(F. B.) 3 W. R. 73 (4 R. J. P. J. 73). *See also* 16 W. R. 102, 23 W. R. 568.

12. Nature of tenure by the — of Kurruckpore explained.—8 W. R. 84 (4 R. J. P. J. 461) 5 W. R. 101. *See* 22 *post* and 14 W. R., P. C., 28.

13. Attachment and sale of ghatwalee tenure, and their surplus proceeds in execution of decrees for debts of deceased holders.—4 W. R., Mis., 5; 6 W. R. 129; 7 W. R. 178. *See* 15 W. R. 38.

14. In a suit by Government against — where possession is found to have been "for a very long time," though defendants had failed to prove possession in excess of sixty years, the *onus* was held to lie on the Government to prove possession within sixty years.—5 W. R. 136.

15. Permanent leases granted by the — of Beerbhoom prior to the decennial settlement, for the due performance of Police duties, cannot be set aside at the instance of the present Sirdar —, the creation of such under-tenures not being beyond the power of the —.—5 W. R. 215.

16. A sunnud personal to the grantee does not confer a hereditary transferable and permanent tenure at a fixed rate; such a grant as the latter would require the clearest and most precise definition.—5 W. R. 290.

17. In the absence of express words to the contrary, ghatwalee lands held under a lease which neither recognises the pre-existing *status* of the — nor confers on them any right other than that of holding at a fixed rate as long as service is required of them, are resumable by the zemindar when that service is no longer required.—5 W. R. 292. *See* 22 *post*.

18. Possession presumably from the decennial settlement, and gradual cultivation on payment of a quit-rent, imply a grant which protects a ghatwal from enhancement or assessment on the land so cultivated.—6 W. R. 10, 8 W. R. 232. *See also* 16 W. R., P. C., 29.

19. Where a landlord's claim to rent from the ghatwal was dismissed by a competent Court sixty years ago, there is evidence of the highest order in a suit by the landlord for a declaration of right to future rent.—*Ib.*

20. Possession by — merely on payment of quit-rent, with enjoyment of profits, does not entitle them to hold at a fixed jumma, or to retain any of the land after ceasing to perform the duties for which it was assigned.—6 W. R. 80.

21. A suit will lie to assess lands occupied by — in excess of the area recorded in their *issumnovisee*.—6 W. R. 197. *But see* 8 W. R. 232, 9 W. R. 158.

22. Ghatwalee tenures granted either by the British Government or the Native Government which preceded it, subject to ghatwalee services, are not resumable, because those services are no longer required.—(F. B.) 6 W. R. 199. *See* 14 W. R., P. C., 28; 17 W. R. 315.

23. A suit for khas possession by Government will lie in respect of ghatwalee lands admittedly included in a decennially settled estate.—6 W. R. 326.

24. Where a ghatwalee tenure was resumed by Government, who, denying the right of the former holder to settlement, made first a temporary and afterwards a permanent settlement with a third party, the cause of action of the former holder was held to have accrued when the temporary settlement was made to another without any *malikhana* being paid to him.—7 W. R. 465.

25. Relative to the — of Kurruckpore, their appointment by zemindars, possession and title, resumption and settlement.—10 W. R. 179. *See* 14 W. R., P. C., 28.

26. A ghatwalee tenure in Beerbhoom is not resumable at the mere goodwill and pleasure of the executive authorities.—10 W. R. 401.

27. A declaratory decree was refused to be given as to the right of Government to re-instate a ghatwal in possession, when no such right could be shown to exist in any person or body whatsoever.—11 W. R. 180.

28. Where K, without the consent of the zemindar, sold a part of his ghatwalee estate to L, and K's entire rights and interests in the tenure were afterwards sold in execu-

GHATWALS (*continued.*)

tion to G, to whom the zemindar granted a fresh sunnud, the zemindar, by granting the fresh sunnud, was held to have objected to and disallowed the sale by K to L.—11 W. R. 282.

29. The — of Beerbhoom are not competent to grant leases in perpetuity, and their successors are not bound to recognize such incumbrances.—15 W. R. 38.

30. The long-uninterrupted possession of — was held clearly entitled to greater weight than the *issumnovisee* returns.—(P. C.) 16 W. R., P. C., 29.

31. Where the zemindar sold a ghatwalee mehal as *mâl* land, and the purchaser, in collusion with the former ghatwal, granted him a mokurruree tenure, thus changing the nature of the tenure,—*Held* that the Government had a right to sue in order to maintain its own nominee in possession of the land as ghatwal, and that the limitation of sixty years was applicable to such a suit.—18 W. R. 190.

32. Any presumption that there may be against the right of — to grant mokurruree leases, cannot hold good against such leases when granted in good faith for the clearance of jungle.—18 W. R. 376.

33. A document purporting to be a statement by the then zemindar of the ghatwalee villages in Kurruckpore in 1211 and 1216 was held to be admissible in evidence.—22 W. R. 231.

See **Enhancement 225, 230.**
Land taken for Public Purposes 17, 26.

Gift.

1. Mode of construing deeds of — by Ranee Bhowanee.—W. R. F. B. 112 (*modified by P. C.*) 18 W. R. 226.

2. According to Mahomedan law, a *donatio mortis causâ* is not effectual as a —, but only as a will. To render a — valid, it must be accompanied by immediate delivery of possession.—2 Hay 163 (Marshall 315).

3. According to Mahomedan law, a gift on a death-bed is viewed in the light of a legacy.—2 Hay 345.

4. A mookhtarnamah addressed by a Hindoo proprietor of an estate before his death to the Collector, and a petition presented to the Collector by the mookhtar 3 days before the proprietor's death, were held to constitute a valid disposition of his property according to Hindoo law.—2 Hay 370 (Marshall 357).

5. There is no prohibition in the Hindoo law against a — to one who is deaf and dumb and an idiot. Although an idiot, etc., cannot take by right of inheritance, a — by a parent to an idiot, etc., to operate after the parent's death, is valid.—*Ib.*

6. According to Hindoo law, an instrument by which one person professes to give property to another without any delivery of possession, and declares that he retains the property during his own life, cannot be construed as a complete — creating a vested estate in the donee.—2 Hay 405 (Marshall 367).

7. According to Hindoo law, a — in consideration of the donee being competent to offer funeral cakes to the donor's husband, is inoperative with respect to an heir of the original donee incompetent to offer the same. *Ib.*

8. According to Mahomedan law, there need not be a valuable consideration for a —.—Sev. 457. *See also* (P. C.) 26 W. R. 36.

9. In the same case it was held that though a grantor of a pension, by a subsequent will, prohibited the grantee from suing for payment of the pension, the terms of the grantor's will could not affect the right of the grantee under the deed of —, which was absolute.—*Ib.*

10. A — to an idol or a wife, being mere volunteers, is not valid as against the donee's creditors.—W. R. Sp. 107.

11. According to Mahomedan law, no formal delivery and seisin are necessary to the validity of a — of property by a father to a minor son.—W. R. Sp. 121.

When there is, on the part of a father or other guardian, a real and *bonâ fide* intention to make a —, the law will be satisfied without change of possession, and will presume the subsequent holding of the property to be on behalf of the minor.—(P. C.) 23 W. R. 208.

12. In a suit to avoid a — by a Mahomedan father to a minor son, the *onus probandi* is on the father.—W. R. Sp. 121.

13. The rule that a — of *mushâ* or an undefined — of joint undivided property, mixed with property capable of division, is invalid by Mahomedan law, does not apply to a — by a father to a minor son.—*Ib.*

Or (as stated by the Privy Council) does not apply to definite shares in zemindarees which are in their nature separate estates with separate and defined rents.—(P. C.) 23 W. R. 208.

14. By Mahomedan law there can be no revocation of a — by a father when the son has alienated the thing given.—W. R. Sp. 121.

15. According to Mahomedan law, a — is invalid where the donor is to remain in possession during his lifetime.—W. R. Sp. 185.

16. According to Mahomedan law, if a person executes a — in a sickness which proves fatal, effect can be given to only one-third.—W. R. Sp. 221.

17. — to superstitious uses. *See* Legacy 1.

18. Where a suit for possession is brought upon an alleged deed of —, and the Court directs, under s. 13 Reg. III of 1793, proclamation to be made for all parties having claims to the property to come in, the plaintiff cannot be allowed, after the decree is pronounced giving him but a small share of the property he claims, to object to the proceedings on the ground that the rights of the parties entitled to the property were not put in issue, and that he was prevented from adducing evidence in support of his case.—(P. C.) 6 W. R., P. C., 1 (P. C. R. 98).

19. A deed by a Mahomedan, in which he declared, "I have adopted A B to succeed to my property," was held to be neither a deed of — nor a testamentary gift to take effect after the death of the donor, there being a complete absence of any relinquishment by the donor or of seisin by the donee.—(P. C.) 6 W. R., P. C., 46 (P. C. R. 150).

20. Where the Court below had decided against the claim of the plaintiff upon a deed of —, the probabilities (independently of the evidence) being rather against than in favor of it, and no satisfactory account was given of the reasons which caused the postponement of the appeal for at least 12 years, the Privy Council did not think it safe to reverse the judgment of the Lower Court.—(P. C.) P. C. R. 225.

21. A concurrent judgment of the Lower Court affirmed, rejecting a claim to a moiety of *maafee* and other zemindaree property under alleged deeds of — and relinquishment by a deceased Mahomedan widow and her married daughters and two unmarried daughters in favor of her husband.—(P. C.) P. C. R. 241.

22. A *hibba-bil-ewaz* or deed of — made in contemplation of marriage, is not a revocable instrument.—1 Hyde 150.

23. A *tumleeknamah* or death-bed — cannot operate save as a will. Such a — or will, if made in favor of one who is an heir, will, so far as regards that heir, be inoperative without the consent of the other heirs.—1 W. R. 16.

24. A voluntary — by a husband to his wife is not void against the husband's creditors, if at the time of the — the husband was solvent, and the wife was put in possession under the —, and particularly against one who became a creditor of the husband long after the —.—1 W. R. 21.

25. A *hibbanama* or voluntary deed of — made in good faith cannot be defeated by a subsequent judgment-creditor.—1 W. R. 41.

26. A deed of — of ancestral property not being valid under Hindoo law without the consent of all the heirs, a wife is not bound by her husband's consent to a deed of — to their children. The wife and husband being in possession not beneficially for themselves, but for their children, the wife's acquiescence is not to be presumed by being in possession.—1 W. R. 59.

27. Mode in which offices of priest and manager had been held for many generations is material evidence of the conditions on which the original — of an idol was made.—1 W. R. 108.

28. Effect of a third party's success in setting aside, as not *bonâ fide*, a deed of — of immoveable property, upon the claim of a decree-holder who had failed, on summary application in execution, to have the same deed set aside.—2 W. R. 305.

29. According to Mahomedan law, one of two sharers can give over his share to the other even before partition.—3 W. R. 37.

30. A mokurruree lease executed when grantor was in

GIFT (*continued*).

contemplation of death, was held to be a death-bed —; and the natural heirs, in whose favor it was executed, were declared incapable of taking anything under it, except their shares of the deceased's property according to Mahomedan law.—3 W. R. 40.

31. A deed executed more than a year before the death of the maker, and as to which it was doubtful whether it was in its terms testamentary or not, was held to operate as a —, and not as a will or death-bed —.—3 W. R. 164.

32. A deed professing to be a will, but making a — of property during the testator's lifetime, was held to be a deed of absolute —, and not a will, with reference to the conduct of the testator and the surrounding circumstances. —3 W. R. 200.

33. A — of ancestral property by a Hindoo with the consent of his sons is not invalid in the province of Bengal. —3 W. R. 226.

34. The representatives of a husband making a *benamee* — to his wife for fraudulent purposes are bound by his act, but the — is no bar to the claims of any creditors.—4 W. R. 11.

35. Under the Mahomedan law a — cannot depend upon a contingency or be postponed, but seisin must be immediate.—5 W. R. 4 (*affirmed by P. C.*) 26 W. R. 36. *See also* 9 W. R. 257.

36. In a *hibba-bil-ewaz* or — for a consideration, there must be exchange of property for property, or property for money or for a legal appreciable value.—*Ib.*

37. The words "*angoja santan*" occurring in a deed of — would limit the — to the male issue of the donee.—5 W. R. 119.

38. Case in which an ineffectual attempt was made to set up a death-bed deed of — as executed in the form of a deed of sale in order to defeat the operation of the Mahomedan law of wills, by which a testator is precluded from giving more than one-third of his property by will.—5 W. R. 198; 16 W. R., P. C., 32.

39. Under Hindoo law, a person who becomes a leper after succeeding to property is not incapable of making a — of that property.—6 W. R. 68.

40. The absence of seisin is no objection to the validity of a — by a Hindoo.—6 W. R. 215.

41. When a cadet member of the Doomraon family gave, for the support of his illegitimate sons, certain properties which he purchased out of the savings and profits of his appanage, even admitting that he was in possession of such properties during his lifetime, his possession would be that of a trustee for his illegitimate sons.—*Ib.*

42. A Mahomedan widow or other woman may give away property held in her own right; but such a — made on her death-bed, being looked upon as a will, will be inoperative beyond a certain extent.—8 W. R. 81.

43. In establishing the validity of a deed of — taken from a woman (a Hindoo widow) stricken with a mortal disease and in expectation of death, proof at least of equal strictness to that required to prove a testamentary disposition must be given, and the proof to support such a transaction ought to be sufficient to establish that she knew what she was about, and intended to make such a disposition of her property.—(P. C.) 10 W. R., P. C., 3.

44. Where a Mahomedan transferred certain Government paper to his son, reserving the interest to himself for life, the object of the disposition being to give the son a larger share of the father's property than would come to him by succession *ab intestato*,—*Held* that the transaction could not be impeached on moral grounds, nor did it violate any provision of the Hedaya.—(P. C.) 10 W. R., P. C., 25. *See* 16 W. R. 175.

45. The Mahomedan law, although it allows revocation of a — at any time before delivery, is precise as to the impossibility of revoking a — after delivery without the decree of a Judge or the consent of the donee.—11 W. R. 320.

46. Whether, when a Hindoo, during his last illness and two or three days before his death, handed over certain Government securities to one of his sons without reading them, the — was under Hindoo law a good —, and passed not only the paper, but also the debt and the interest secured by the notes, or whether it was under the English law a good *donatio mortis causâ*, or whether it was a nuncupative will.—12 W. R., O. J., 4.

47. Every — of any part of a judgment-debtor's property is not void if he has sufficient other property to satisfy a decree against him.—12 W. R. 137.

48. A petition to the Collector declaring a son's widow to be petitioner's heir, and that her daughters and their children were and would be the heirs and maliks whilst the management would be kept in his own hands during his lifetime, and praying that the widow's name might be substituted for the petitioner's as the recorded proprietor of his estates on the Government rent-roll, was held to be a document expressive of a —.—13 W. R. 285.

Held *contra* to be a testamentary disposition, and that the daughters' children not being in existence at the death of the testator, took no interest under the will; but that the widow had the property for her life, and subject to that estate, the daughters took it absolutely as joint owners.—14 W. R. 315.

49. Where such a document was construed to convey an absolute — to a son's widow and the donee came into possession,—*Held* that, not being expressly restricted from alienating, she was not, by the terms of any law or usage which binds a Hindoo family, prevented from alienating the estate.—13 W. R. 285.

50. Where a deed of — purports to have been executed by a purdah woman, the Court should see that it was fairly taken from her, and that she was a free agent and duly informed of what she was about. When the disposition is in the nature of a death-bed disposition, the Court ought to be satisfied that it was the free voluntary act of the party by whom it purports to have been executed and expresses his real intentions.—(P. C.) 14 W. R., P. C., 7.

51. Under the Mahomedan law, a — is not valid until possession is given by the donor and taken by the donee.—16 W. R. 88.

52. A *hibba-bil-ewaz* differs from an out-and-out sale as well as from a —, while it partakes of the character of both, and, if supported by sufficient consideration, is binding under the Mahomedan law upon the heirs of the party executing such deed.—16 W. R. 175.

53. Where from the whole tenor of a deed of — it appeared that the real intention of the donor was to pass all her property, qualifying words used in the deed were held not to control its operation.—16 W. R. 300.

54. A benignant construction should be used in the case of transfers by —, the real meaning of the document being enforced, if it can be reasonably ascertained from the language used.—(P. C.) 18 W. R. 359. *See* 24 W. R. 268.

55. Voluntary —.—*See* Conveyance 13, 14.

56. Under the Mahomedan law, possession is absolutely requisite to establish the validity of a *hibba*.—22 W. R. 314.

57. Where a father executed a deed of — in favor of his son with the condition that the son should take the property subject to the same liability in respect of the maintenance of the family as it was subject to in the hands of the father,—*Held* that this was not an obligation entered into by father or son as a matter of contract, but a reservation in the father's — which did not give the son a greater right to be maintained at the expense of the father, or in the family house, than he had before.—23 W. R. 236.

58. Where by its terms a sunnud to a Hindoo female determines with the life of the donee and the children born of her womb, the — becomes that of a life-interest only, and she can make no disposition of the property after her death. If she wills it away, the will is inoperative and without legal effect.—24 W. R. 268.

See Auction-Purchaser (Execution Sale) 8.
Endowment.
Evidence 60.
,, (Admissions and Statements) 8.
Hindoo Converts 3.
,, Law (Adoption) 51, 59.
,, ,, (Coparcenary) 30.
,, ,, (Inheritance and Succession) 29, 100, 101.
,, ,, (Sale) 3.
,, Widow 24, 36.
Husband and Wife 7, 15.
Lien 4.

GIFT (*continued*).

See Limitation (Act XIV of 1859) 74.
Mahomedan Law 3, 5.
Marriage 33.
Onus Probandi 69, 77, 133, 154, 182, 231.
Registration 15, 40, 71.
Res Judicata 64.
Special Appeal 69, 90.
Streedhun 2, 5, 11.
Trust 5.
Will 51.

Golahs.

See Jurisdiction 24.

Gomashta.

1. A — can present a written statement of claim.—1 R. J. P. J. 47 (Sev. 15.)
2. A — may be sued under Act X of 1859 for rents embezzled by him, whether or not he has committed a criminal offence.—2 W. R. (Act X) 105 (4 R. J. P. J. 385).

See Enhancement 179.
Jurisdiction 116, 260, 383, 384.
Limitation 123, 202, 203.
,, (Act XIV of 1859) 201.
Master and Servant 2.
Naib.
Onus Probandi 175.
Pottah 16.
Principal and Agent 4, 6, 44, 47.
,, ,, Surety 35.
Rent 83.
Sale 196.
Salt 5.
Stamp Duty 38.

Goods.

1. Non-delivery of —.—*See* Damages 15.
2. Sold and delivered.—*See* Joinder of Actions 2; Vendor and Purchaser 7.
3. Removal of —.—*See* Practice (Attachment) 3*a*.
4. Sold by retail.—*See* Limitation (Act XIV of 1859) 42.
5. Sale of — wholesale.—*See* Limitation (Act XIV of 1859) 197; Vendor and Purchaser 39.

See Jurisdiction 306.
Moveable Property.
Personal Property.
Value of Goods.

Goonjaish Land.

Definition of —.—21 W. R. 135.

Goozashta.

See Landlord and Tenant 49.
Occupancy 82.

Gorabundee Tenure.

Act X of 1859 did not deprive any party of his rights in a — existing before its enactment and recognized in a long series of decisions.—17 W. R. 306.

Government.

1. When bound by the acts of its officers.—(P. C.) 2 W. R., P. C. 61 (P. C. R. 476). 13 W. R. 497, 24 W. R. 309.
2. To question an act of State directly or indirectly, the contention must be raised on a suit to which the — must be made a party.—(P. C.) 10 W. R., P. C. 25.
3. Government office.—*See* Evidence (Documentary) 85, 86.

See Absconding Offender 9.
Adverse Possession 2.
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Ghatwals 2, 11, 14, 23, 27, 31.
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Jurisdiction 64, 180, 191, 301, 325, 435.
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Limitation (Act XIV of 1859) 218, 237.
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See Practice (Criminal Trials) 19.

Granddaughter.

See Granddaughter's Son.
Hindoo Law (Inheritance and Succession) 1, 20.
Mahomedan Law 11.
Sale 1.

Granddaughter's Son.

See Certificate 86.
Hindoo Law (Inheritance and Succession) 20.

Grandfather.

See Certificate 41.
Grandfather's Daughter's Son.
Great Grandfather.
Hindoo Law (Adoption) 4.
,, ,, (Alienation) 7.
,, ,, (Inheritance and Succession) 56, 85.
,, ,, (Sale) 3.
,, Widow 50.
Mahomedan Law 36.

Grandfather's Brother.

See Mahomedan Law 11.

Grandfather's Daughter's Son.

See Hindoo Law (Inheritance and Succession) 20.

Grandmother.

See Certificate 72.
Guardian 22.
Hindoo Law (Alienation) 9.
,, ,, (Inheritance and Succession) 44.
Lease 35.
Mahomedan Law 36.
Marriage 20, 22.
Partition 10*a*.
Right to Sue 4.
Sale 1.

Grandnephew.

See Hindoo Law (Adoption) 3.
,, ,, (Inheritance and Succession) 3.
Res Judicata 11.

Grandson.

See Great Grandson.
Great-great-great Grandson.
Hindoo Law (Alienation) 16.
,, ,, (Inheritance and Succession) 29, 44, 48, 68, 71, 85.
,, ,, (Sale) 3, 15.
,, Widow 99.
Mahomedan Law 31.
Maintenance 27.
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Granduncle.

See Hindoo Law (Inheritance and Succession) 59, 73.

Great Grandfather.

See Hindoo Law (Adoption) 28.
,, ,, (Inheritance and Succession) 84.

Great Grandson.

See Hindoo Law (Inheritance and Succession) 80.

Great-great-great Grandson.

See Hindoo Law (Inheritance and Succession) 84.

Grievous Hurt.

1. The conviction of a man who, being first struck, strikes his assailant in the mere heat of passion and causes his death, should have been for causing — and not for culpable homicide.—1 R. J. P. J. 125.

2. Where a person entered a house for the purpose of committing an assault and caused —, in convicting him of —, it is not necessary to pass a separate sentence for house trespass.—2 W. R., Cr., 29.

3. Where there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the striking of a blow which proves fatal is not culpable homicide not amounting to murder but —.—2 W. R., Cr., 39.

4. Evidence necessary to support a charge of —.—2 W. R., Cr., 48 (4 R. J. P. J. 355); 12 W. R., Cr., 25; 18 W. R., Cr., 22.

5. A person who, by a single blow with a deadly weapon, killed another who had entered at dead of night into a dark room where he and his wife were sleeping separately for the purpose of having criminal intercourse with her, was held guilty of causing — on a grave and sudden provocation.—3 W. R., Cr., 55.

6. The amount of punishment for cutting off a wife's nose for intriguing with another man, depends on the time of the commission of the —, whether at the instant, or long after the husband found himself dishonored.—4 W. R., Cr., 17.

7. Where, in the commission of a robbery, death was caused by a blow with a lattee on a tender part of the head, the conviction was altered from one under s. 394 Act XLV of 1860 to one under s. 325.—6 W. R., Cr., 16.

8. Where a prisoner was charged under ss. 304, 325, and 323 Penal Code, and the jury brought in a verdict of guilty under s. 335,—*Held* that he was not acquitted of —, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—23 W. R., Cr., 61.

See Abetment 4.
High Court 152, 162.
Hurt 4, 5.
Murder 1, 7, 22.
Right of Private Defence 2.
Rioting 4, 9.

Ground Rent.

See Bastoo Land.
Jurisdiction 117, 143, 264, 421.

Guarantee.

If a seller enters into a contract to provide and ship molasses at his risk and expense, he must be taken to — that the casks are proper casks, and properly coopered for any voyage from Calcutta, for which such goods may be reasonably ordered by the purchaser to be shipped.—1 Hyde 123.

See Abatement 26.
Contribution 1, 2.
Freight 2.
Principal and Surety.
Warranty.

Guardian.

1. According to Hindoo law, the guardianship of a female minor after her marriage belongs to the husband's heirs or those who are entitled to inherit his estate after her death.—2 Hay 196 (Marshall 313).

2. A — may be allowed to sue without a certificate under Act XL of 1858, and such permission may be given by the Court in which the suit is brought.—2 Hay 575.

GUARDIAN (*continued*).

3. A father cannot, as — of the property of his infant daughters, sue for arrears of rent without obtaining a certificate under Act XL of 1858.—1 R. J. P. J. 118 (Sev. 191).

4. A testamentary — can only be removed on a regular suit.—Sev. 746.

5. According to Mahomedan law, a mother is entitled (in preference to the father) to the custody of her child, if such child be a male, till it shall have attained the age of 7 years, or if such child be a female, till it shall have reached the age of puberty.—2 Hyde 63. *See also* W. R. Sp. 131.

But her right is made void by marriage with a stranger. —20 W. R. 411.

6. The lender of money to the mother of a minor acting as his —, though obliged to enquire into the necessity and object of the loan, is not bound to see to its application; and if he so enquires and acts honestly, the real existence of an alleged necessity is not a condition precedent to the validity of his charge.—W. R. Sp. 166.

7. The father, if a proper person, cannot be deprived of his legal right to the custody of his legitimate children of whatever age. The 2 and 3 Vic. c. 39, which gives a discretionary power to a Judge in England, has not been extended to India, and therefore the law applicable to cases which occurred in England previously to the passing of that statute is applicable in India.—1 Hyde 99. *See also ib.* 143.

8. The legal age of discretion for Hindoos in India is uniformly 16 years. Up to that age the father has an undoubted right to the custody of his children.—1 Hyde 111.

9. A mother may be allowed, under s. 3 Act XL of 1858, to sue as — of her minor son, without having taken out a certificate.—1 W. R. 121, 3 W. R. 183. *See* 25 *post*.

10. Amongst Sheeyas, according to the Mahomedan law, the custody of a female child rests with the mother only up to the seventh year.—2 W. R. 76.

11. A — cannot grant his ward's lands in perpetuity except on clear proof of benefit to the minor.—2 W. R. 325.

12. A — appointed by a Civil Court should file accounts annually, and is not necessarily accountable for any sums paid by him in discharge of debts barred by limitation.—3 W. R. 57.

13. The — at the time of the suit, and not the former — of a minor, was held liable, to the extent of the funds in his hands belonging to the minor, for a debt incurred for the benefit of a minor.—3 W. R. 137.

14. Proximity of connection does not necessarily entitle a person to be a —. A person not of caste is not a proper person to be the — of Hindoo minors.—4 W. R., Mis., 3.

15. A Judge has no power under ss. 16 or 21 Act XL of 1858 to order a discharged — to file his accounts.—4 W. R., Mis., 3. *See also* 9 W. R. 555.

16. A Hindoo father is not deprived of his right to the custody of his children, merely by reason of his conversion to Christianity.—5 W. R. 235.

17. The acts of a — may appear hostile to his ward and yet be done in perfect good faith.—6 W. R., Mis., 18.

18. According to Mahomedan law, a mother is entitled (in preference to the paternal uncle, unless appointed — or manager by the deceased father) to the guardianship of the property of her minor children and to the custody of their persons.—6 W. R., Mis., 125.

19. Where a Hindoo sells as — of her minor son and for his maintenance, the purchaser need only satisfy himself of the necessity of the sale, but he is not bound to see to the application of the money.—7 W. R. 23. *See* 10 W. R. 8.

20. The Hindoo law does not prohibit a father from appointing by writing or by word any other person than the mother to be the — of his minor children.—7 W. R. 73.

21. A person who disputes the authority of another to act as his —, and repudiates the acts done by such — in that capacity, cannot take advantage of those acts so far only as they are beneficial to him.—*Ib.*

22. According to Hindoo law, a paternal grandmother has a preferential right over a stepmother to the guardianship of a minor.—7 W. R. 321.

23. Act XL of 1858 does not contemplate the interference of the Court in its summary jurisdiction where a testator duly provides for the guardianship of his minor son.—8 W. R. 278.

24. Though a — cannot institute a suit without a certificate under Act XL of 1858, the want of such certificate does not make every act of his null.—8 W. R. 331.

25. Under s. 3 Act XL of 1858, and under the Hindoo law generally, a mother may ordinarily be — of her minor son without a certificate or a special order of Court.—10 W. R. 425.

26. According to the Mahomedan law, the mother has the right of custody of the person of her minor son up to seven years of age.—11 W. R. 297.

27. *Quære.* Whether, as against her relations on the father's side, she has that right after that age if she does not maintain him.—*Ib.*

28. A — by a minor's grandfather is not summarily removable by a Judge under Act XL of 1858; but a suit against him for expelling the minor and his mother from the family and depriving them of the minor's share, may be instituted without a certificate of administration.—11 W. R. 370.

29. Under Act XL of 1858, the Court may appoint a person to be the — of the *property* of a minor, notwithstanding the appointment of a — of the *person* of the minor by the father.—13 W. R. 230.

30. The execution by a — appointed under Act XL of 1858 of a bond without an order of the Court, was held to be not a sufficient ground for removing him from office. —13 W. R. 300.

31. Act XL of 1858 authorizes a Court to select a — irrespective of the law of the parties (*e.g.*, Mahomedan law), but does not prevent the selection of a — indicated by such law, if he be a fit person.—13 W. R. 454.

32. According to the Sheeya law, a mother can neither be herself the — of her children, nor can she make a testamentary appointment of — to them; according to the Soonnee law, a mother is allowed to be the — of her children, if a boy, until he reaches the age of seven, and if a girl, until she attains the age of puberty; but if the mother marry again, she is not legally competent to continue as —.—*Ib.* *See also* 20 W. R. 411.

33. A widow defending a suit as — of her minor son cannot be made liable in her own person as well as representing the heirs of her husband.—15 W. R. 192.

34. In a suit where a minor defendant need not take an active part, no — is justified in taking any step prejudicial to his ward. If he can do nothing positively for the minor's benefit, he ought to leave the matter to the Court. —16 W. R. 142. *See* (P. C.) 23 W. R. 412.

35. It is the duty of a — to regard the interests of his minor; but he is not bound to contest every claim against the minor's estate, whether well or ill founded.—(P. C.) 17 W. R. 117.

36. A — must abstain from any arrangement beneficial to himself and detrimental to his minor's estate; and if he has failed to do so, he must, immediately after the minor comes of age, obtain a distinct formal ratification.—20 W. R. 274.

37. Appointment of a — *ad litem* to carry on a suit for a minor.—25 W. R. 184.

See Advancement 1.
Appeal 15, 144.
Auction-Purchaser (Execution Sale) 3.
Cause of Action 11.
Certificate 9, 15, 20, 31, 32, 34, 42, 44, 45, 51, 57, 85, 89, 97.
Compromise 3, 4, 5, 12.
Costs 25, 66, 100, 105.
Court of Wards.
Cross Decrees 12.
Damages 74.
Declaratory Decree 24.
Enhancement 167.
Evidence (Estoppel) 15, 82,
Fraud 18.
Gift 11.
Hindoo Law (Adoption) 53.
" " (Sale) 13, 14.
" Widow 26, 90.
Husband and Wife 41.

GUARDIAN (*continued*).

See Intervenor 86.
Jurisdiction 67, 89, 511.
Kubooleut 5.
Lease 24, 29, 36, 46, 79.
Limitation 85, 132, 148.
,, (Act XIV of 1859) 63, 98, 117, 293.
,, (Reg. III of 1793 s. 14) 4.
Lunatic 10, 21.
Mahomedan Law 32, 33, 36.
Majority 3.
Manager 10.
Marriage 13, 14, 16, 22, 27.
Mesne Profits 60.
Minor 8, 10, 11, 16, 24, 25, 27, 32, 33, 34, 35, 40, 41, 45.
Mortgage 17, 83, 278.
Onus Probandi 43, 149, 159.
Partition (Butwarra) 30.
Pauper Suit or Appeal 9.
Pre-emption 71.
Privy Council 64, 67.
Purchase Money 1.
Rent 10.
Res Judicata 69, 91.
Right to Sue 13, 16.
Sale 4, 16, 17, 22, 30, 49, 61, 70, 224.

Gya.

See Arms 2.
Jurisdiction 443.
Pilgrims 1.

Habeas Corpus.

See Guardian 7.
Hindoo Converts 2.
Prisoner 1.

Hajuts.

1. In what cases — are allowable from the rents mentioned in kubooleuts.—3 W. R. (Act X) 24.
2. Cannot be claimed in law by a ryot.—15 W. R. 270.

Half-Brother.

See Certificate 96, 108.
Hindoo Law (Inheritance and Succession) 13, 45, 51, 57.

Half-Sister.

See Hindoo Law (Inheritance and Succession) 86.

Haut.

See Market.

Havelee.

See Boundary 8.

Hazareebaugh.

See Commitment 11.

Heir.

1. Where the first — ceases by demise or in any other legal way to be such —, the next — must from that moment be considered as — ; and so where a widow having only a life-interest waived all claim to be —, the plaintiff as next — was held entitled to succeed, notwithstanding the objection that, if he predeceased the widow, the defendant would be next —.—Sev. 545.

2. Unbegotten —.—*See* Hindoo Law (Inheritance and Succession) 27, 28, 29.

3. The liability of an — for the debts of his ancestor extends only to the extent of the inheritance which he has received. If he has waived all his rights to the inheritance, his property acquired *aliunde* is not liable.—W. R. Sp., Mis., 33 (L. R. 110); 2 W. R. 258; 23 W. R. 283.

So also as to an adopted son and heir.—12 W. R. 41.

The same as to bond-debts.—12 W. R. 233.

Procedure to enforce judgment-debt against — is not by a separate suit but by execution proceedings.—23 W. R. 283.

4. Heir-apparent.—*See* Hindoo Law (Inheritance and Succession) 45.

5. In the absence of proof of collusion between the decree-holder in satisfaction of whose decree the property in dispute was sold, and the purchaser of that property, the decree is binding against the — in expectancy of the judgment-debtor.—6 W. R. 52.

6. By "assets received from the estate of his father" must be understood assets which came to him direct from his father, and not assets which came to him after his brother's death in a round-about way after passing through the hands of another —.—12 W. R. 240.

7. Heir of disqualified reversioner.—*See* Practice (Execution of Decree) 180.

8. Residuary heir.—*See* Mahomedan Law 28, 30.

9. Estates-tail.—*See* Hindoo Law (Inheritance and Succession) 101.

10. Where a party claims as representing a particular person, and the defendant succeeds in showing that there is another person in existence who is a preferable — to the ancestor or the person under whom the claim is made, that is an answer to the plaintiff's suit.—22 W. R. 358.

11. The heirs of a deceased person are liable for papers in their custody for which a claim is established against the estate of the deceased, and also for debts due therefrom to the extent of assets taken by them.—22 W. R. 388.

As well as for damages arising from his breaches of contract.—22 W. R. 494.

See Ancestral Property 1, 2, 4.
Appeal 145, 148, 202.
Auction-Purchaser (Execution Sale) 3.
Certificate 14, 16, 18, 33, 43, 67, 68, 124.
Co-heirs.
Contribution 13.
Costs 66.
Court Fees 15.
Declaratory Decree 3.
Disclaimer 1.
Dower 11, 12, 20, 23, 32, 36.
Endowment 16, 42, 48.
Evidence (Estoppel) 105, 109.
Fine 13.
Fraud 3, 8, 9, 10.
Gift 26, 30, 52.
Hereditary Rights.
Hindoo Law (Adoption) 29, 30, 45, 50, 77.
,, ,, (Inheritance and Succession).
,, ,, (Sale) 3, 5, 7.
,, Widow 65, 94, 100, 104, 120.
Joint Decree 7.
Jurisdiction 37, 47, 272, 414, 464.
Kubooleut 6.
Lease 19, 65.
Limitation 50, 207.
,, (Act XIV of 1859) 285.
Mahomedan Law 12, 25, 26, 35.
Maintenance 18.
Majority 2.
Mesne Profits 22, 24, 48.

HEIR (*continued*).

See Mokurruree Tenure 9.
Mortgage 24, 226.
Occupancy 90.
Onus Probandi 91, 92, 95, 208.
Pottah 21.
Practice (Appeal) 102.
„ (Execution of Decree) 40, 41, 94.
„ (Possession) 41.
Putnee Talook 15.
Registration 50, 85.
Relinquishment 13, 18.
Remoteness.
Res Judicata 10, 65.
Sale 205.
Service Tenure 5.
Splitting Cause of Action 4, 7.
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Vendor and Purchaser 44, 52.
Will 11, 12, 17, 27, 35, 51, 61, 69.
Wrongs and Remedies 1.

Hereditary Rights.

Dismissal of claim for the exercise of a hereditary office upheld for want of evidence of any descent of the office in the family of the plaintiff.—(P. C.) 6 W. R., P. C., 10 (P. C. R. 108).

See Court Fees 15.
Enam Grants 1.
Enhancement 87, 222*a*.
Evidence (Admissions and Statements) 45.
Ghatwals.
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Hindoo Law (Adoption) 38.
Lease 36, 46, 65.
Maafee-birt 1.
Mahomedan Law 7, 27.
Mokurruree Tenure.
Onus Probandi 269.
Polliam.
Pottah 25.
Putnee Talook 74.
Service Tenure 12.
Talook 4.
Trees 6.

Hidden Treasure.

1. The owner of the house, where an ornament has been found concealed, may, under s. 6 Reg. V of 1817, retain possession of it as a "valuable property" under s. 2, if no one else has substantiated any claim thereto.—4 W. R., Mis., 7.

2. Under s. 8 Reg. V of 1817 the finder of — loses his right thereto if he does not notify his discovery to the Zillah Judge within one month.—15 W. R. 525.

3. Any custom which gives — to the owner of the estate in which it is found, was done away with by Reg. V of 1817.—*Ib.*

High Court.

1. Cancelment by — of order for a criminal trial for perjury.—W. R. F. B. 23 (1 Hay 235, Marshall 72).

2. Points of law may be referred to — under s. 28 Act XXIII of 1861.—(F. B.) W. R. F. B. 85.

3. Power of — to extend time for special appeal.—(F. B.) W. R. F. B. 146.

4. Power of — on special appeal to disallow items improperly deducted from value of gross produce of land.—W. R. F. B. 148.

5. The decision of one Divisional Bench of the — cannot bind the view of another.—Sev. 371.

6. Direction by the — for the trial of certain offences in violation of the provisions of the Penal Code.—Sev. 84, 949; 6 W. R. 3.

7. Cl. 8 of the Rules of 1st January 1861, and not s. 23 Act XXIII of 1861, was followed in a case in which the point on which the Judges in appeal differed was not directly adjudicated upon by the Judge in the Court of first instance.—2 Hyde 25.

8. A case entered on the Undefended Board can only be transferred to the Defended Board on payment of the costs of adjournment (under s. 109 Act VIII of 1859), if any, thereby occasioned.—2 Hyde 86.

9. In a suit brought in the —, where the plaintiff shall recover less than 1000Rs., no costs can be awarded unless the Judge shall certify that the action was fit to be brought in the — by reason of the difficulty, novelty, or general importance of the case, or of some erroneous course of decisions in like cases in the Court of Small Causes.—2 Hyde 237.

10. The power given to the — by the Code of Civil Procedure, of taking of its own motion original evidence anew, should be exercised very sparingly, and when exercised, it is desirable that the reasons for exercising it should always be recorded or minuted by the Court in the proceedings.—(P. C.) 7 W. R., P. C., 10 (P. C. R. 651). *See also* 7 W. R. 313.

11. The — sitting in appeal on questions of fact is guided by the same rules as those of the Privy Council when they sit upon motions for a rule for new trials from the late Supreme Court. It will not disturb a judgment upon a question of credibility of witnesses unless it appears that the Court below was clearly wrong in the conclusion drawn from such evidence; and will look upon the decree of a Judge as to facts in the same light as the verdict of a jury; and though some of the reasons given for the conclusion arrived at be erroneous, the — in appeal will not say that the decree is against the weight of evidence, if sufficient reasons for such decree still remain.—1 Hyde 105. *See also* 11 W. R. 315.

12. Defect in decree of the Lower Court remedied by an order of the — to the Court executing the decree.—1 W. R., Mis., 19.

13. Cannot enhance a legal sentence.—1 W. R., Cr., 13, 19, 49; 3 W. R., Cr., 38, 40.

14. Cannot interfere on a question of evidence.—1 W. R., Cr., 16. *But see* 36 *post* and 12 W. R., Cr., 47.

15. Cannot interfere with non exercise by Sessions Judge of discretion under s. 135 Act XXV of 1861 to order commitment to the Court of Sessions of an accused person discharged by the Magistrate.—2 W. R., Cr., 44.

16. Effect of decision by — in one appeal on two others before Judge.—3 W. R. 2.

17. Can raise and adjudicate upon such points in special appeal as are apparent on the face of the pleading, even though the parties to the suit are silent.—3 W. R. 40.

18. A recognized agent under s. 17 Act VIII cannot address the —, as that is the privilege of advocates and pleaders under s. 10 of the Charter.—3 W. R. 108.

19. A former judgment of the — cannot be impugned on any ground; if erroneous, it can only be appealed from to the Privy Council.—3 W. R. 223.

20. Can order re-apprehension of an accused person.—3 W. R., Cr., 4 (4 R. J. P. J. 420).

21. The —, as a Court of revision, under s. 404 Act XXV of 1861, has no jurisdiction over European British subjects in criminal cases.—3 W. R., Cr., 61.

22. Power of — how limited (under s. 35 Act XXIII of 1861) when annulling an illegal order of a Judge reversing a sale for arrears of rent under Act X.—4 W. R. (Act X) 28.

23. The application to — to remove a case from a District Court, and to try it as a Court of extraordinary original jurisdiction, under cl. 13 of the Charter, should be made to a Judge sitting on the original side of the Court.—4 W. R., Mis., 7.

24. Cases in which — interfered under s. 35 Act XXIII of 1861, where the Lower Courts acted without jurisdiction.—3 W. R., Mis., 145; 4 W. R., Mis., 22; 5 W. R., Mis., 3, 45; 6 W. R. (Act X) 8, 56; 6 W. R., Mis., 82; 15 W. R. 426, 518.

25. Under s. 405 Act XXV of 1861 the — cannot reduce

HIGH COURT (*continued*).

a sentence passed by a Magistrate and confirmed in appeal by the Sessions Judge, when there is no defect in the conviction on a point of law, but the sentence appears to the Court to be excessive.—4 W. R., Cr., 15. (*Over-ruled*) *see* 46 *post*.

25*a*. Where the — directed a case to be sent to the Magistrate to investigate it and consider whether there was any ground for instituting criminal proceedings, under ss. 415, 423, or 464 Penal Code, against parties who had set up fraudulent deeds.—5 W. R. 61, 20 W. R. 110.

26. S. 15 of the High Court's Act (24 and 25 Vic. c. 104) does not give it a superintendence over a Collector's Court. —5 W. R. (Act X) 25. *See contra* 42 *post*.

27. S. 35 Act XXIII of 1861 only applies where there is an order of a Court in appeal acting without jurisdiction.—5 W. R. (Act X) 35.

28. If, in the course of hearing a suit, a Civil Court commits a party to the suit for trial on a charge of perjury or forgery, or directs that the case be made over to a Magistrate for investigation of such a charge, the —, in the exercise either of civil or criminal jurisdiction, cannot, in the event of a regular or special appeal being lodged against the decision of the Lower Court, interfere to stay the criminal proceedings until the appeal shall have been heard and determined.—(F. B.) 5 W. R., Mis., 24. *See* 15 W. R., 352.

29. The — cannot, either under its Charter by way of motion, or as a Court of Appeal or Court of Revision under s. 12 or s. 35 Act XXIII of 1861, interfere with the order of a Lower Court setting aside a sale of moveable property in execution of a decree, even though the Lower Court has thereby acted wholly without jurisdiction and done injury to a *bonâ fide* purchaser.—(F. B.) 5 W. R., Mis., 25. *But see* 8 W. R. 109, 12 W. R. 406, 14 W. R. 9.

30. Only questions that arise in the course of a trial of a suit can be referred to the — by a Small Cause Court under s. 22 Act XI of 1865.—5 W. R., S. C. C., 7, 21; 12 W. R. 17.

31. And not such as arise on applications for execution of a decree.—(F. B.) 5 W. R., S. C. C., 19, 21 W. R. 376.

So also as regards a Recorder's Court under Act XXI of 1863.—9 W. R. 478, 13 W. R. 27.

Nor can there be a reference to — upon an application for a review of judgment by a Small Cause Court.—17 W. R. 94.

Nor under s. 28 Act XXIII of 1861.—17 W. R. 95.

32. Where — set aside an order of confiscation.—5 W. R., Cr., 8.

32*a*. The — as a Court of Revision can interfere with a judgment of acquittal or conviction and can also enhance punishment.—(F. B.) 5 W. R., Cr., 45. *See* 14 W. R., Cr., 27; 15 W. R., Cr., 23, 68, 83.

The above ruling applies only to cases tried by assessors but not by a jury.—10 W. R., Cr., 14.

32*b*. Can act as a Court of Revision, after it has acted as a Court of Appeal, in order to correct an error in law which could not be set right on appeal.—(F. B.) 5 W. R., Cr., 45.

32*c*. The — as a Court of Revision, cannot reverse the finding of a jury. —*Ib*. *See* 82 *post*.

33. Improper advice given by the Judge to the jury upon a question of fact, or the omission of the Judge to give that advice which a Judge ought to give the jury upon questions of fact, amounts to such an error in law in summing up as to justify the —, on appeal or revision, in setting aside a verdict of guilty.—(F. B.) 5 W. R., Cr., 80. *See also* 7 W. R., Cr., 2; 18 W. R., Cr., 66; 19 W. R., Cr., 71; 20 W. R., Cr., 41. *But see* 82 *post*.

34. The power of setting aside convictions and ordering new trials, for any error or defect in the summing up, will be exercised by the — only when the Court is satisfied that the accused person has been prejudiced, or failure of justice has been occasioned, thereby.—*Ib*. *See also* 24 W. R., Cr., 24, 77.

35. Power of — to remand a case when Lower Court has refused to enforce attendance of plaintiff's witnesses.—6 W. R. 14.

36. Case where the Lower Court had not heard the witnesses and the — formed an independent opinion upon the evidence.—6 W. R. 25.

37. Where there is an error of law in the judgment of the Lower Appellate Court, although the judgment may not be very clear, yet if the facts have been sufficiently proved by the Lower Courts, the — is bound to pass the proper judgment in the case, instead of sending the case back to the Lower Appellate Court for a fresh judgment.—6 W. R. 97.

38. Cannot interfere with the refusal of a Lower Appellate Court to comply with an application under s. 355 Act VIII to file additional exhibits.—6 W. R. 196. *See* 17 W. R. 47.

39. Where — declined to allow plaintiff to examine witnesses at the last moment just when judgment was about to be passed.—6 W. R. 213.

39*a*. In a Court where the concurrence of two or more Judges is necessary to a judicial determination, the Judges should confer together and state the points of difference between them. If they do not do so and the case is referred to other Judges, those other Judges have jurisdiction to go into the whole case.—6 W. R. 269. *See also* 9 W. R. 1.

40. The — has no power, under s. 35 Act XXIII of 1861, to interfere with the order of a Deputy Collector for the sale of an under-tenure in execution of a decree for rent (such order of the Deputy Collector being final), not even where the Collector by mistake assumed jurisdiction and affirmed the order of the Deputy Collector, but afterwards, upon review of judgment, set aside his former order as made without jurisdiction.—(F. B.) 6 W. R. (Act X) 53. *See* 15 W. R. 551.

41. *Quære*. Whether the Collector's Court is subordinate to the — within the meaning of the same section.—*Ib*. *See also* 6 W. R. (Act X) 68.

42. Under 24 and 25 Vic. c. 104 s. 15 the — has a power of superintendence over Collector's Courts, and can interfere to restrain a Collector from exercising a jurisdiction which properly belongs to the Zillah Judge.—6 W. R. (Act X) 68. *See contra* 26 *ante*.

So also as to inferior Courts generally.—11 W. R. 57.

43. Cannot interfere under s. 35 Act XXIII of 1861 where a Small Cause Court acts without jurisdiction, but only when the Small Cause Court has been moved to refer the case to the — under s. 22 Act XI of 1865.—6 W. R., Mis., 26.

44. Under s. 35 Act XXIII of 1861, the — can interfere either where a subordinate Court exercises an appellate jurisdiction which it has no power to exercise, or where the Subordinate Court in the exercise of a jurisdiction which it has, exceeds its jurisdiction. When a Court exceeds its jurisdiction, the — may set aside that part of the order which is in excess of jurisdiction; and when the Court has no jurisdiction, the proper order is to set it aside altogether. When an appeal is heard by a Court which has no jurisdiction and another Court has, the — may set aside the decision of the Court without jurisdiction, and may, if it think right, refer the case to that which has, even if it be too late to prefer a fresh appeal to that Court.—(F. B.) 6 W. R., Mis., 77.

45. The — declined to interfere under s. 35 Act XXIII of 1861 with an order of a Judge complained of as made without jurisdiction, confirming an order of the Sudder Ameen affirming a sale, the order of the Judge having been passed more than a year and a half ago and having been acted upon by the petitioner.—6 W. R., Mis., 96.

46. Reading ss. 405 and 428 Act XXV of 1861 together, the — can reduce a sentence passed by a Magistrate and confirmed in appeal by the Sessions Judge, or a sentence passed in appeal by the Sessions Judge altering a sentence passed by a Magistrate, on the ground that the sentence is excessive. (F. B.) 6 W. R., Cr., 7.

47. Orders passed by Sessions Judges confirming orders by Magistrates calling upon parties to give security for their good behaviour, though not subject to appeal, are open to revision by the — under s. 404 Act XXV.—6 W. R., Cr., 18.

48. Cannot reverse a conviction on extraneous evidence derived from another case.—6 W. R., Cr. 42.

48*a*. Where two Judges of the — differ in opinion in a criminal appeal, the opinion of the Senior Judge prevails under s. 36 of the Charter.—6 W. R., Cr., 88. *See* 72 *post*.

So in a civil case.—6 W. R. 118. *See* 54, 55, 66 *post*.

49. Under ss. 24 and 25 Vic. c. 104 s. 15 the — cannot, where an inferior Court has jurisdiction to try a case and has tried it, merely because there is an error apparent in the decision on the facts, alter that decision where the law

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allows no appeal.—7 W. R. 130. *See also* 9 W. R. 386, 13 W. R. 418, 18 W. R. 511, 23 W. R. 268 (reversing *ib.* 11).

52. According to s. 22 Act XI of 1865, a Small Cause Court is required, in referring a case for the decision of the —, to draw up a statement of the case, and to refer it with the Court's own opinion.—7 W. R. 165.

53. When a joint undivided estate has been attached under s. 26 Reg. V of 1812 and made over to the management of a Collector under Reg. V of 1827, the Zillah Judge has jurisdiction to divide the surplus profits of the estate among the several shareholders according to their respective shares, and the — cannot, under 24 and 25 Vic. c. 104 s. 15, interfere with the order of the Judge. —(F. B.) 7 W. R. 273.

54. A judgment of the Senior Judge of a Division Bench of the — is final within the meaning of s. 36 of the Charter, even when the Junior Judge entertains doubts and expresses no final opinion.—(F. B.) 7 W. R. 277.

55. The Junior Judge cannot refer a question for the decision of the Full Bench, without the concurrence of the Senior Judge.—(F. B.) *Ib.*

56. Where the Lower Court added a third party as plaintiff, and in the absence of the original plaintiff, improperly dismissed the suit, the suit was held to be still pending and the Lower Court was directed by the — under 24 and 25 Vic. c. 104 s. 15 to take up and try the case accordingly.—*Ib.*

57. The — has no jurisdiction to compel a Small Cause Court to re-hear a suit dismissed by the latter Court on the ground of *res judicata.*—7 W. R. 316.

58. It is in the discretion of the Judge to consider whether sufficient cause has been shown for the non-presentation of an appeal in proper time, owing to delay on the part of the Collector to whom the appeal was wrongly preferred in the first instance, and the — has no authority to interfere with the exercise of such discretion by the Judge.—7 W. R. 337.

59. The — has no power (either under 24 and 25 Vic. c. 104 s. 15 or s. 16 of the Charter) to order the release of a person arrested and lodged in jail in 1867 in execution of a summary decree for rent obtained under Reg. VII of 1799 in 1851 against the prisoner's father and another.—7 W. R. 430.

60. If the order allowing plaintiff to sue as a pauper has been improperly obtained, the proper course is to apply to the Court which made the order. The — cannot set aside such order which is final under s. 311 Act VIII, nor can it stay proceedings on the ground that plaintiff has no interest in the suit.—7 W. R. 486.

61. An appeal lies, under s. 15 of the Charter, to the — at large from the judgment (not being a sentence or order passed or made in a criminal trial) of a Division Court in the exercise of appellate jurisdiction, when the Judges of such Court are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges.—(F. B.) 7 W. R. 52, 512. *See* 13 W. R. 209, 14 W. R. 298, 16 W. R. 191.

62. The — refused to interfere, under 24 and 25 Vic. c. 104 s. 15, with an order of a Lower Court which, though apparently arbitrary and indiscreet, that Court was authorized by law to make.—(F. B.) 7 W. R. 519. *See* 12 W. R. 406, 15 W. R. 170.

63. In a suit under Act X of 1859 plaintiff got an *ex-parte* decree for arrears of rent in the Court of the Deputy Collector. He took out execution for the full amount pending an appeal which eventually modified the decree. He then applied to the Deputy Collector for an order for restitution of the excess. The Deputy Collector refused his application and referred him to a regular suit. The — under 24 and 25 Vic. c. 104 s. 15, ordered the Deputy Collector to enforce restitution, thus compelling him to exercise a jurisdiction which belonged to him and which he had refused to exercise.—(F. B.) 7 W. R. 520. *See also* 14 W. R. 9, 212; 15 W. R. 418. *See* converse case 71 *post*, and 12 W. R. 406.

So also where a plaintiff refused to attach property in execution which he was bound to attach.—15 W. R. 246.

But where a defendant failed to make out any right to a re-hearing under s. 119 Act VIII, the — refused to interfere under 24 and 25 Vic. c. 104 s. 15.—18 W. R. 471.

64. After a sentence has once been passed by a competent authority, the — has no power to interfere with it except upon appeal or on reference or by way of revision as provided by the Code of Criminal Procedure.—7 W. R., Cr., 1.

65. The — may make an order upon motion to compel a Lower Court to make absolute a sale made by that Court but not confirmed.—8 W. R. 109.

66. Where a Full Bench was equally divided in opinion, the opinion of the Senior Judge prevailed under s. 36 of the Charter.—(F. B.) 9 W. R. 1.

67. The — cannot, under 24 and 25 Vic. c. 104 s. 15, admit an appeal which Act VIII of 1859 and s. 11 Act XXIII of 1861 do not allow.—9 W. R. 115.

68. Cannot interfere with refusal of Zillah Judge to rectify a decree.—9 W. R. 394.

69. Where a respondent in a Collector's Court applied in special appeal to the — to exercise the powers of supervision vested in it by s. 35 Act XXIII of 1861 and 24 and 25 Vic. c. 104 s. 15, to set aside the Collector's proceedings as made without jurisdiction, it was held that, as he had allowed the appeal to be heard without objection, he was not entitled to the relief sought.—10 W. R. 6. *See* 14 W. R. 254.

70. Where a suit should have been dismissed under a recent ruling of a Full Bench, the — of its own motion reversed the decree notwithstanding the objection was not taken in the written grounds of appeal.—10 W. R. 213.

70*a*. The —, on cause shown, can require a decree-holder who has been put into possession in execution of a decree against which an appeal has been preferred to the Privy Council, and is still pending, to give security.—12 W. R. 296, 14 W. R. 205.

71. Act X of 1859 confers upon the Revenue Courts merely a limited jurisdiction, and the — under its general power of control has the right to prevent them from exceeding that jurisdiction; as where an attachment in execution of a decree for rent payable in respect of a saleable under-tenure, of the debtor's general immoveable property, was set aside, because under s. 105 it is only after a sale of the under-tenure itself that the other immoveable property is attachable, and because under s. 109 immoveable property can only be attached in execution of a money-decree if satisfaction of the debt cannot be obtained against the person or the moveable property of the debtor.—10 W. R. 311.

72. Where a difference of opinion arises between two Judges of the — in a criminal appeal, the opinion of the Senior Judge prevails under s. 36 of the Charter, notwithstanding s. 420 Act XXV of 1861.—(F. B.) 10 W. R., Cr., 45.

73. The — under its general power of superintendence can quash an order made by a Magistrate for the issue of a warrant in a case in which he had no jurisdiction to do so. —11 W. R. 26.

74. An appeal, under s. 15 of the Charter, from the judgment of a Division Bench of the — must be preferred within 30 days from the date of the judgment, unless good cause be shown to the contrary.—11 W. R. 107.

The 30 days count from the date when the written judgment is put in and not when the judgment was delivered orally.—12 W. R. 458.

75. The — interfered under 24 and 25 Vic. c. 104 s. 15 where a Lower Court erred in law in not exercising a jurisdiction which it was competent to exercise, namely, to investigate the claim of a person objecting to the sale of certain mortgaged property declared liable to be sold in satisfaction of a money-decree.—11 W. R. 202.

Also where the Lower Court erroneously refused to confirm a sale in execution.—19 W. R. 227 (*affirmed by P. C.*), 26 W. R. 44.

76. Also where a Lower Court wrongly refused to try a case as it ought to have done under s. 15 Act XIV of 1859. —11 W. R. 229. *But see* 14 W. R. 212.

77. The interference of the — under 24 and 25 Vic. c. 104 s. 15 should be confined to cases in which the Lower Court has acted without jurisdiction, or improperly declined jurisdiction, and ought not to extend to cases in which that Court has put an erroneous interpretation upon a provision of law. —11 W. R. 23, 302. *See also* 14 W. R. 212; 15 W. R. 90; 18 W. R. 289, 396, 402, 511; 23 W. R. 402.

It was exercised where a case was tried by the ordi-

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nary Civil Courts instead of the Small Cause Court.—15 W. R. 397.

The — never acts on this section unless it is satisfied (1) that there has been a capital error in the judgment of the Lower Court complained of, and (2) that plaintiff has entitled himself to the special interference of the —.—25 W. R. 344.

78. The — cannot under 24 and 25 Vic. c. 104 s. 15 interfere with an order of a Lower Court rejecting security offered with a view to stay execution.—11 W. R. 494.

79. In a suit of a Small Cause Court nature (to recover the value of crops cut and carried away) which had been decided upon the real issues between the parties, the — refused to interfere under the above section, merely on the ground that, when a part of the dispute was whether the lands were in British Tipperah or in Independent Tipperah, the Lower Appellate Court had no jurisdiction to entertain and determine that point.—11 W. R. 506.

80. The — declined to interfere under the same section with an order of a Collector recalling a previous order passed by himself in execution.—11 W. R. 512.

81. The — interfered under the same section in declaring a judgment passed without jurisdiction to be ineffectual.—11 W. R. 547.

82. The — cannot upon revision set aside a verdict of guilty or not guilty on account of misdirection of the jury by the Judge.—(F. B.) 11 W. R., Cr., 29. *See also* 15 W. R., Cr., 68.

83. It was not the intention of 24 and 25 Vic. c. 104 s. 15 to confer any rights on litigant parties, but only to give the — control over the Courts subject to its appellate jurisdiction.—12 W. R. 74.

84. *Quære.* Whether a conflict between a Judge's order and a direction of law is a ground for the interference of the —.—*Ib.*

85. Where there is a remedy by a regular suit, the — cannot interfere by the exercise of its extraordinary powers under 24 and 25 Vic. c. 104 s. 15.—12 W. R. 103. *See also* 14 W. R. 212, 15 W. R. 170, 17 W. R. 477, 18 W. R. 87.

86. Where of five analogous cases governed by one decision of the —, two were appealed to the Privy Council and the decision was reversed, the — reviewed and reversed its own decision in the other three cases.—12 W. R. 154. *See* 13 W. R. 439.

87. An order of a — being a final decision by way of appeal on a question arising in a suit, cannot be interfered with except by the Privy Council.—12 W. R. 374.

88. Before granting a rule to show cause why execution should not be issued, the — must be satisfied that, if no cause is shown, the rule must be made absolute.—12 W R. 413, 13 W. R. 310, 16 W. R. 55.

89. In cl. 1 of the Rules of 5 August 1867 regarding the admission of appeals under s. 15 of the Charter, the words "unless the Court in its discretion, etc., shall grant further time" refer to the Appellate Bench of the — and not to the Division Bench.—12 W. R. 458.

90. An order rejecting a review is not a "*judgment*" within the meaning of s. 15 of the Charter.—12 W. R. 459.

91. Points not raised before the Division Bench cannot be allowed in appeal under s. 15 of the Charter.—12 W. R. 498.

92. The — as a Court of Revision cannot say that a Sessions Judge is wrong in law because he does not, under s. 367 Act XXV of 1861, postpone a case for the evidence of a witness.—12 W. R., Cr., 44.

93. The — cannot interfere under s. 405 Act XXV of 1861 except in cases coming from the Courts of Session.—12 W. R., Cr., 47.

94. An advocate of the — is entitled to appear and plead on the Appellate side, but not to file an appeal in the Registrar's office.—13 W. R. 60.

He may appear when instructed by the party in person and not by a pleader. —24 W. R. 15.

95. The — could not interfere upon a reference from a Small Cause Court to set aside an illegal order passed by the officiating Judge, but left the parties to apply to the — under 24 and 25 Vic. c. 104 s. 15.—13 W. R. 98.

96. An attempt to move the — under 24 and 25 Vic. c. 104 s. 15 is substantially a special appeal which cannot be allowed with reference to a case under s. 246 Act VIII.—13 W. R. 121.

The — even refused to interfere in a case where the Judge below thought he was not, and the — considered that he was, competent to proceed under s. 246 to enquire into the question whether the properties which the claimant alleged he had purchased were purchased by him *benamee* for the judgment-debtor or not.—20 W. R. 202.

97. The — declined to exercise the extraordinary powers described in the same section in a case where a Magistrate did not interfere with the arrest in his Court, under a civil process, of a person who had been accused before the Magistrate but was acquitted at the time of his arrest.—13 W. R. 393.

98. There is no necessity that a motion for the cancellation or return of a security-bond, given to stay execution till the appeal is disposed of, should be presented to the Judges who heard the appeal; a Division Bench may receive motions from all districts without reference to the division into groups.—13 W. R. 403.

99. As the — has authority under s. 338 Act VIII to make an order calling for security, so it has power at any time to modify or cancel such order or to direct the restoration of the security when no longer required. In carrying out such orders of the —, the Judge below acts, not judicially, but ministerially; and the party aggrieved by the Judge's proceeding can only apply to the — by way of motion, and not by way of appeal.—*Ib.*

100. Where the — under ss. 342 and 106 Act VIII required the assignee of an insolvent plaintiff to give security for costs.—13 W. R. 481.

101. Where a Deputy Collector who had passed an informal decree refused to execute it on application, the decree-holder was held entitled to an order from the —, under 24 and 25 Vic. c. 104 s. 15, directing the Deputy Collector to do his duty.—14 W. R. 9.

102. Under s. 22 Act XI of 1865, a Small Cause Court should not make a reference to the — on a simple question, merely on the application of the parties, unless it entertains a doubt upon the question.—14 W. R. 248.

103. Where a suit for 254Rs. was decreed by a Deputy Collector for 49Rs., and the Collector in appeal decreed the full amount originally claimed, the — under 24 and 25 Vic. c. 104 s. 15 set aside the Collector's decree as made without jurisdiction.—14 W R. 251.

104. The Court of the Recorder of Moulmein is subject to the appellate jurisdiction of the — at Calcutta, and is consequently subject to the powers of superintendence vested in that Court by 24 and 25 Vic. c. 104 s. 15.—14 W. R. 257. *See* 15 W. R. 351.

105. In cases heard by the — in its appellate jurisdiction, where the Judges are equally divided in opinion, a party desirous of appealing to the Privy Council must, according to s. 39 of the Court's Charter, first appeal under s. 15 of the Charter.—14 W. R. 298. *See* 16 W. R. 191.

106. A question of fact cannot be reserved for the opinion of the — under s. 7 Act XXVI of 1864 when there is a difference of opinion between two Judges of the Small Cause Court at Calcutta. Where the Judges differ on a question of law, it ought to be expressly stated. In a case of a difference of opinion between two Judges upon the point as to whether there should be a new trial or not, no rule can be granted.—14 W. R. 312.

107. *Quære.* Whether the — can give costs in a case in which it has declined jurisdiction.—*Ib.*

108. Only a Sessions Judge or the Magistrate of a District, and not a Joint Magistrate, can make a reference to the — under s. 434 Act XXV of 1861.—14 W. R., Cr., 25.

109. The — ought not, under s. 404 Act XXV of 1861, to set aside a conviction, if otherwise good and the prisoner be not really prejudiced, on a mere technical ground, such as the miscitation of a section or the like.—14 W. R., Cr., 41.

110. An order passed by a Magistrate under s. 62 Act XXV of 1861 is not of the nature of a *judicial* proceeding and cannot therefore be interfered with by the — under s. 404.—(F. B.) 14 W. R., Cr., 46. *See* 15 W. R., Cr., 66; 17 W. R., Cr., 37; 18 W. R., Cr., 22.

So also an order passed under s. 518 Act X of 1872, which cannot be interfered with by the — under s. 297.—20 W. R., Cr., 53; 21 W. R., Cr., 22; 22 W. R., Cr., 52.

But if made without jurisdiction, it may be interfered with under 24 and 25 Vic. c. 104 s. 15.—22 W. R., Cr., 24, 78; 23 W. R., Cr., 34; 24 W. R., Cr., 30. *See also* 24 W. R., Cr., 26.

But proceedings under s. 308 and the other sections of

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chap. XX Act XXV of 1861 are *judicial* within the meaning of s. 404.—16 W. R. 63. *But see* 16 W. R., Cr., 66.

111. The — cannot interfere under s. 434 (*qy.* can it interfere under s. 404) Act XXV of 1861 in the case of a conviction before a Justice of the Peace under the 53 Geo. III c. 155 s. 105; such a case falls under s. 410 Act XXV.—14 W. R., Cr., 79.

112. The — cannot interfere under s. 404 Act XXV of 1861 with an order of a Magistrate refusing to deliver the property of a deceased person to his widow who held a certificate under Act XXVII of 1860.—15 W. R. 302.

113. The — refused to interfere under s. 35 Act XXIII of 1861 to set aside an order of the Collector in appeal, because, although the Collector had no jurisdiction to make the order which he made, the Deputy Collector's order was contrary to s. 92 Act X.—15 W. R. 551.

114. A Judge of the — making an order in the Original Criminal Jurisdiction of that Court is not a Court subject to the control of the Court under 24 and 25 Vic. c. 104 s. 15.—15 W. R., Cr., 60.

115. Power of —, under s. 29 of the Charter, to transfer a criminal case from a Court in the Mofussil for trial before itself.—15 W. R., Cr., 69.

116. Power of —, under s. 35 Act XXV of 1861, to order the transfer of criminal cases from one Mofussil Court to another.—*Ib.*

The proper course in such cases is to apply to the — in its judicial capacity on affidavits in the usual way and not by letter to the English Department.—(F. B.) 25 W. R., Cr., 27.

117. The — refused to interfere, as a Court of Revision under s. 404 Act XXV of 1861, with a legal sentence, although light, inasmuch as, under s. 405, the Court could not say that the sentence was contrary to law.—15 W. R., Cr., 83.

118. Power of — to interfere, under s. 151 Act X by way of revision or appeal, with an order in execution.—*See* Appeal 115.

119. The distribution of a penalty adjudged by a Magistrate under s. 26 Act XIII of 1857 is no part of his judgment and therefore not a matter over which the — can exercise control under s. 404 Act XXV of 1861.—16 W. R., Cr., 65.

120. Application for revision by the —, under s. 404 Act XXV of 1861, of an order passed in appeal by the Sessions Judge, must be by motion.—16 W. R., Cr., 72.

121. A party cannot obtain a right of appeal to the — under s. 27 Act XXI of 1863 by valuing his appeal at 3100Rs. when his own statement shows that the value is only 1590Rs., and the difference is made up by damages not claimed in the suit.—17 W. R. 213.

122. The order for the issuing of a *mandamus* is not a "*judgment*" within the meaning of s. 15 of the Charter, and is not therefore open to appeal. —17 W. R. 361.

123. The word "*judgment*" in s. 15 means a decision which affects the merits of the question between the parties determining some right or liability, and which may be either final or preliminary or interlocutory.—*Ib.*

124. The — may interfere with an order passed by a Magistrate under s. 62 Act XXV of 1861 when the order is beyond the Magistrate's jurisdiction.—17 W. R., Cr., 37. *See* 18 W. R., Cr., 22.

125. Criminal appeals to the — may be disposed of by a single Judge. No second petition of appeal can be entertained after a first one has been rejected by a single Judge. —17 W. R., Cr., 47.

126. The extraordinary power given to the — by s. 404 Act XXV of 1861 should only be exercised in cases of jurisdiction or obvious and patent injustice.—17 W. R., Cr., 58. *See also* 18 W. R., Cr., 3, 8, 23.

127. A Small Cause Court cannot, under s. 22 Act XI of 1865, submit to the — a question as to the propriety of an inference, which is a question of fact.—18 W. R. 145.

128. Upon an appeal, under s. 15 of the Charter, from the decision of the Senior Judge of a Division Bench (differing in opinion from the Junior Judge) dismissing a petition of a late Moonsiff complaining of his removal from office by the English Committee,—*Held* that no Division Bench has any power to reconsider or review or set aside a decision of the English Committee, or to order the Judges of the English Committee to reconsider or review or set aside their decision.—18 W. R. 209.

129. *Quære.* Whether an appeal lies under s. 15 from the decision of the Senior Judge in such a matter.—*Ib.*

130. The — declined to entertain the objection (taken when the appellant's argument was closed) that no appeal lay to it on the ground that the amount or value did not exceed 5000Rs.—18 W. R. 218.

131. The — refused to interfere under 24 and 25 Vic. c. 104 s. 15 to set aside an order rejecting a document made by a Court under s. 129 Act VIII, an appeal from such order being barred by s. 363.—18 W. R. 511.

132. The — cannot interfere under s. 434 Act XXV of 1861 in a case of difference of opinion between the Magistrate and the Judge as to the credibility of certain witnesses. —18 W. R., Cr., 7, 39.

133. The —, acting under s. 426 Act XXV of 1861, declined to interfere where the accused were convicted of criminal trespass instead of a nuisance under s. 290 Penal Code but had not been sentenced to a heavier punishment than if convicted of a nuisance.—18 W. R., Cr., 38.

So also where the accused was tried by a jury instead of assessors and was not shown to have been prejudiced.—18 W. R., Cr., 59.

134. If a Magistrate decides any point of law erroneously (*e.g.* under s. 308 Act XXV of 1861) the case falls under s. 404; but not so if he decides erroneously upon the evidence; neither is an erroneous decision upon the evidence an excess of jurisdiction justifying the interference of the — under its general power of superintendence.—18 W. R., Cr., 41.

135. The — refused to interfere with a verdict of a jury which was not only contrary to the charge of the Sessions Judge but incorrect.—18 W. R., Cr., 45.

136. The — under s. 434 Act XXV of 1861 quashed a Deputy Magistrate's order of acquittal under s. 272 and directed a re-hearing if complainant wished it.—18 W. R., Cr., 59.

137. The — has no power to interfere with an order of a purely executive nature, —as where a Magistrate appointed special constables under s. 17 Act V of 1861 instead of proceeding under s. 15 to apply for sanction to an increase to the Police force. 18 W. R., Cr., 67.

138. The — declined to interfere, under 24 and 25 Vic. c. 104 s. 15 and Act VI of 1871, on behalf of a party complaining that the District Judge had acted *ultra vires* in dismissing him from the post of Sheristadar of the Moonsiff's Court, on the ground that the applicant was open to seek his remedy from the Local Government.—19 W. R. 148, 20 W. R. 470.

139. The — declined to interfere under 24 and 25 Vic. c. 104 s. 15 and s. 4 Act XI of 1865 with the decision of a Small Cause Court refusing defendant's application to send for a letter filed in another Court.—19 W. R. 306.

140. Where a case is referred to the — under s. 287 Act X of 1872, the Court is bound under s. 288 to go into the facts of the case, although the conviction was by the verdict of a jury.—19 W. R., Cr., 57.

141. The — interfered, under s. 297 Act X of 1872, in the case of a prisoner who had not appealed.—*Ib.*

142. Postponing a sale in execution without taking security or having the amount of the decree deposited, is not an act either without jurisdiction over the subject-matter or in the proceeding, or in excess of jurisdiction, so as to justify the interference of the — under 24 and 25 Vic. c. 104 s. 15.—20 W. R. 10.

Neither can the — interfere under the same section with an order releasing attached property, on any ground of irregularity unless failure of justice has occurred.—22 W. R. 277

143. Where a Magistrate could, under s. 46 Act X of 1872, have reheard a case himself, a reference to the — under s. 297 was considered unnecessary.—20 W. R., Cr., 15.

144. Where the — enhanced the punishment passed by the Sessions Judge on a prisoner who was convicted of dacoity.—20 W. R., Cr., 21.

145. The interference of the — should not be sought under s. 296 Act X of 1872 only because the Magistrate considers a more severe sentence on a different charge necessary; but there must be matter on the record to show that the charge has been improperly framed, or that the sentence is clearly inadequate.—20 W. R., Cr., 22.

146. The — has jurisdiction (having regard to ss. 297 and 64 Act X of 1872) to take cognizance of and revise the proceedings of a Magistrate while they are in an interlocutory state of pending investigation, and may suspend such

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proceedings without having the record before it, and order bail to be taken from the accused.—20 W. R., Cr., 23.

147. A Magistrate should, under s. 296 Act X of 1872, exercise a discretion as to whether he will refer a case to the —, and is not bound to refer every case in which he may detect an error.—20 W. R., Cr., 40.

148. The questions which the — has to determine under ss. 294 and 297 Act X of 1872 are questions of law or procedure which affect the decision, and not questions of fact depending upon conflicting evidence which has been considered by the Judge and upon which he has given his opinion adversely to the accused.—20 W. R., Cr., 40, 61. *See also* 24 W. R., Cr., 60; 25 W. R., Cr., 10, 74.

149. How Sessions Judges should make their report to the — under s. 296 Act X of 1872.—20 W. R., Cr., 50.

150. S. 17 Act XVIII of 1862 does not apply to a trial before a Sessions Judge but only to trials on the Original side of the —.—20 W. R., Cr., 51.

151. S. 294 Act X of 1872 is limited to sentences and orders as distinct from judgments. The former may be altered or set aside by the — for illegality or impropriety; but the latter cannot be interfered with (except in such cases where the law gives an appeal on the facts) unless it be shown that there has been some material error of law which renders the conviction illegal and improper in law.—20 W. R., Cr., 61.

152. Where a Deputy Magistrate convicted an accused of causing grievous hurt, and the Magistrate considered that the accused ought to have been committed to the Sessions on a charge of culpable homicide, and recommended that the — should enhance the sentence which had been passed, the — held that it could not deal with the case in the mode suggested, but under s. 297 Act X of 1872 annulled the conviction by the Deputy Magistrate and directed that the accused should be committed to the Sessions on charges of culpable homicide and grievous hurt.—20 W. R., Cr., 63.

153. Act XVII of 1873 was not intended to deprive the Nawab Nazim of Moorshedabad of any right of appeal to the — which he had before it was passed.—21 W. R. 59.

154. In a suit to set aside a release alleged to have been executed in Calcutta under fraudulent representations made by the first defendant, and for an account and administration of the estate of a deceased Mahomedan who died intestate in Bombay where he left moveable and immoveable property, leave was granted to institute the suit in the — of Calcutta subject to objection by the defendants. Some of the defendants who were residents of Bombay not having appeared, the Court refused to allow the plaint to be taken off the file on the objection of the first defendant who was subject to its jurisdiction. *Held* on appeal that the cause of action included the effect of the release upon the plaintiff's share of the property which was in Bombay, and that the suit came within that part of s. 11 of the Charter of 1865 which provided that the leave of the Court might be obtained; that the proper place where the account asked for should be taken, and where the cause of action for not accounting might arise, would be where the property was situated; and that the dwelling or carrying on business necessary to give the Court jurisdiction under the above section must be of all the defendants, the expression "defendant" being used not as indicating an individual defendant in a suit, but the party defendant to the suit, which may be one person or several.—(O. J.) 21 W. R. 303.

155. An order under the above Section is an appealable order.—(O. J.) *Ib.*

156. Held on a reference under s. 296 Act X of 1872 that the — had no power to set aside an order of acquittal even where a Deputy Magistrate acted illegally and acquitted the prisoner improperly.—21 W. R., Cr., 21.

157. Where one Division Bench of the — declined to interfere in a case upon a reference in which the question of want of jurisdiction was not in any way raised, and that question was subsequently raised in motion before another Division Bench,—*Held* by the latter that they were not debarred from entering into that question and from setting aside an order admittedly made without jurisdiction.—21 W. R., Cr., 32.

158. The — under s. 297 Act X of 1872 set aside the order of a Magistrate appointing to the jury persons who had been appointed by the opposite party, holding that the error of procedure was a material one and affecting the merits of the case.—21 W. R., Cr., 43.

160. Where the Lower Appellate Court's decision is fundamentally wrong, and the liability of the defendants in the essential matter of suit has not been properly tried, the —, though not warranted to interfere in special appeal, is justified in interfering under their general powers of supervision.—22 W. R. 44.

161. The — refused to interfere under 24 and 25 Vic. c. 104 s. 15 to assist parties who were chargeable with great and unexplained delay.—22 W. R. 522.

Or who have contributed by their own conduct to being placed in the position from which they seek relief.—23 W. R. 310.

162. The —, under s. 280 Act X of 1872, altered a conviction from grievous hurt into one of murder and enhanced the punishment accordingly.—22 W. R., Cr., 5.

163. The — will not be justified in exercising the discretion vested in it by s. 468 Act X of 1872 (*e.g.* to sanction a prosecution for giving false evidence) unless there be strong grounds for granting the sanction.—22 W. R., Cr., 11.

164. In an appeal case where no one appeared for the appellant and paper-books had not been delivered either by the appellant or the respondent, the appeal was dismissed but without costs.—(O. J.) 23 W. R. 136.

165. A case should not be sent to the — under ss. 7 and 8 Act XXVI of 1864 until the party against whom judgment is given has given security for the costs of the reference and for the amount of the judgment; and it is the duty of the Small Cause Court, before sending the case, to see that the security is given.—(O. J.) 23 W. R. 136. 146.

166. *Quære.* Has the Bengal Legislative Council power to give to the — any appellate jurisdiction not conferred by the Charter.—23 W. R. 171.

167. Where the — on special appeal directed the removal of a case to itself as a regular appeal.—23 W. R. 266.

168. The — declined, under 24 and 25 Vic. c. 104 s. 15, to interfere to set aside a sale in execution of a decree, at the instance of the representative of the judgment-debtor, who had abstained from appearing to show cause why the decree should not be executed against him, although notice for that purpose had been served on him under s. 216 Act VIII before the sale took place.—23 W. R. 389.

169. Where the — ordered a plaint to be sent to the Small Cause Court for trial (upon payment of costs by plaintiff) after dismissing a special appeal and affirming a decision of the Lower Appellate Court that the suit was cognizable by the Small Cause Court and not the ordinary Civil Court.—23 W. R. 145.

170. Where the —, under s. 272 Act X of 1872, set aside an order of acquittal and convicted the accused of the offence charged.—23 W. R., Cr., 50.

And sentenced him to death.—26 W. R., Cr., 1.

171. The difference of opinion on a question of proof between a Magistrate who did, and another who did not, hear the witnesses, is not a ground on which the — will be disposed to exercise its powers of revision.—23 W. R., Cr., 61.

172. The — cannot interfere under 24 and 25 Vic. c. 104 s. 15 with a decision declared by law not to be subject to appeal, *e.g.* the rejection of an application to sue *in formâ pauperis*.—24 W. R. 62.

173. Where the Judge in the Privy Council Department of the — refused an application for a certificate but was stopped from giving his reasons by the petitioner's Counsel who had hopes of effecting a compromise, and the attempt at compromise having failed, the Judge, when referred to, being unable to deliver any judgment,—*Held* that, under such circumstances, no appeal lay under s. [illegible] of the Charter.—24 W. R. 148.

174. No appeal lies, under the same section, from an order of a Bench of the — granting a certificate that a case is a fit one for appeal to the Privy Council.—24 W. R. 150.

175. The — declined to interfere, under 24 and 25 Vic. c. 104 s. 15, with an order of a subordinate Court refusing to confirm a sale in execution of decree against property declared by Commissioners appointed under Act XVII of 1873 to be held by Government and not alienable by the Nawab Nazim of Moorshadabad.—24 W. R. 311.

The — has no authority to enquire into an award of the Commissioners.—24 W. R. 394.

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176. In an ordinary suit commenced in the — a writ of *fieri facias* cannot issue except within the limits of the Court's original jurisdiction; but where the suit in which the *fieri facias* issued was originally commenced in the Supreme Court, the — was held to have power under 24 and 25 Vic. cl. 104 s. 12 to issue the *fieri facias* and to sell under it the property in dispute.—(O. J.) 24 W. R. 366.

177. The decision of one Division Bench of the — as to the meaning of a Bengalee expression occurring in a particular plaint, cannot be binding upon another Division Bench for the purpose of a different suit.—24 W. R. 414.

178. The — has power, under s. 297 Act X of 1872, to annul what is illegal whilst passing a legal sentence (*i.e.* annul the imposition of a daily fine for continuing an obstruction, and leave untouched the imposition of a substantive fine for making it).—25 W. R., Cr., 6.

179. Where a Deputy Commissioner's order requires, under s. 36 Act X of 1872, the sanction of the Sessions Judge, the — has no jurisdiction to entertain an appeal from it until so sanctioned.—25 W. R., Cr., 18.

180. Where a Magistrate takes up a case under s. 295 Act X of 1872, his only proper course is to proceed under s. 296 to report the case to the — for orders.—25 W. R., Cr., 30, 67.

181. Under s. 297 Act X of 1872 the — ordered a Magistrate to draw up a charge and try an accused whom he had improperly discharged.—25 W. R., Cr., 35.

182. Apart from s. 167 Act I of 1872, the — can, under s. 26 of its Charter, when a case is submitted to it for review, either quash or confirm the conviction as it thinks proper.—(O. J.) 25 W. R., Cr., 36.

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Hindoo Converts.

1. Law applicable to — to Christianity.—(P. C.) 1 W. R., P. C., 1 (P. C. R. 501); 13 W. R., P. C., 41. *See* 14 W. R., P. C., 33.

2. An application for a *habeas corpus* was refused in a case where it appeared that a wife was not detained against her will, her only reason for not returning to her husband being that he was a Christian.—1 Hyde 176.

2. The rule of decision in cases of gifts by husband to wife being — to Christianity, is not necessarily the English law, but the rule prescribed by equity and good conscience, which is in each case to refer the decision to the usages of the class to which the convert may have attached himself, and of the family to which he may have belonged.—1 W. R. 22.

See Guardian 16.
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Hindoo Law.

1. Hindoo families are ordinarily governed by the law of their origin, and not by that of their domicile, the presumption being in favor of the former until the adoption of the law of a new domicile is proved.—W. R. Sp. 56.

So as to a Mitacshara family residing in Bengal.—8 W. R. 261.

Whether, by the transfer of an estate from Zillah Beerbhoom to Zillah Bhaugulpore, the succession became regulated by the Mitacshara law, or whether, by reason of any local or family custom, it continued to be governed by the Dayabhaga —(P. C.) 21 W. R. 89.

The owner of the estate cannot be presumed to change his observances with the district.—23 W. R. 272.

In the absence of all evidence to the contrary, a Hindoo must be considered to be governed by the Mitacshara law where it is the law of the district.—22 W. R. 341.

3. Consent to one point being tried by the Bengal law does not subject plaintiff in all other matters to that law.—1 W. R. 125.

4. Evidence of school of law prevailing in a joint Hindoo family.—2 W. R. 197.

5. Proof of fact that in matters connected with succession, the law of the country of domicile has been adopted by a family, negatives any presumption arising from the observance of ancient customs in other matters.—*Ib.*

6. A testamentary paper to which testator has signified assent, under what circumstances held sufficient in —.—3 W. R. 138.

7. Vyvasthas need not be called for, nor local testimony relied on, to prove the doctrines of —.—3 W. R. 179.

8. Re-union of a joint Hindoo family. *See* Hindoo Law (Inheritance and Succession) 61.

9. Vedantists. *See* Manager 2, 5.

10. Recovering lost property. *See* Self-acquired Property 4.

11. Duty of European Judge in administering —.—(P. C.) 10 W. R., P. C., 17.

12. Under the Hindoo system, clear proof of usage will outweigh the written text of the law.—(P. C.) *ib.*; 23 W. R. 131.

But the custom must be shown to have existed from time immemorial.—16 W. R. 179.

13. The Viromitrodataya is properly receivable as an exposition of what may have been left doubtful by the Mitacshara and is declaratory of the law of the Benares school.—(P. C.) 10 W. R., P. C., 31.

14. The Dayabhaga is the — applicable to Assam.—16 W. R. 42.

15. A custom, according to which the Rajahs of Beerbhoom had granted a right to a share of property described as "Bhabak Mehals," and which appeared to have been always recognised by the Courts, was maintained notwithstanding that it was in contravention of the ordinary —.—22 W. R. 397.

See Adhikaree.
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Hindoo Law (Adoption).

1. A distinct suit for the recognition of an adoption having failed, plaintiff cannot fall back on his right of inheritance.—W. R. F. B. 4 (1 Hay 22).

2. Proof of old deeds of adoption by the Rajah of Nattore.—W. R. F. B. 106 (*affirmed by P. C.*) 18 W. R. 221.

3. The adoption of a grand-nephew is not repugnant to —.—W. R. F. B. 121.

4. An adopted son cannot succeed to his adoptive maternal grandfather's estate when there are collateral male heirs.—*Ib.*

5. The adoption of an elder son, though improper, is not illegal.—1 Hay 260.

6. In proof of permission to a widow to adopt, the Court will exact slight evidence of the performance of ceremonies; but the Court cannot, from the observance of ritual forms, infer the husband's authority to adopt.—1 Hay 311.

7. An adoption of a second son during the lifetime of a previously adopted son, is illegal and impossible.—2 Hay 205 (Marshall 317). *See* 11 W. R. 436, (P. C.) 20 W. R. 377.

8. A son adopted by a female, without the permission of her husband, has no right to the property of his adoptive mother, until her death.—2 Hay 110.

9. Although the *pootroshto jag* and such ceremonies may not be essential to a Soodra adoption, it is conformable with religion and law that they should be performed: and if performed, they are the best proof of the real intention of the adoption.—Sev. 938. *But see* (F. B.) 70 *post.*

10. A mother alone may give her son in adoption without the consent of the father when that father is insane and unable to give his assent.—*Ib.*

11. The adoption by a *Soodra* of an only son as a *kurta-pootro* is not illegal under Hindoo law.—W. R. Sp. 133.

12. Where a Hindoo lady adopted a son, and carried on a law-suit during her husband's lifetime, calling herself his wife and the mother of the adopted son, and the adoption was never denied, this circumstance is strong corroborative evidence that the adoption was made with the husband's consent and its ceremonies performed in his presence.—W. R. Sp. 155.

13. *Semble.* The Hindoo law does not prevent a leper from giving his son in adoption.—W. R. Sp. 173.

14. A sister's daughter cannot become an "appointed daughter" or her son a *pootrika pootro*; nor is the adoption of a *pootrika pootro* valid now.—W. R. Sp. 194.

15. Long possession under an adoption will avail nothing if the adoption fails.—(P. C.) 5 W. R., P. C., 69 (P. C. R. 4).

16. In Bareilly the authority of the husband is essential to the validity of an adoption.—*Ib.*

17. According to Hindoo law, an adopted son succeeds, not only lineally, but also collaterally, to the inheritance of his adoptive father's relations.—(P. C.) 5 W. R., P. C., 100 (P. C. R. 25). *See also* 9 W. R. 423.

18. According to Hindoo law, neither registration of the act of adoption, nor any written evidence of the act having been completed, is essential to its validity.—(P. C.) 5 W. R., P. C.. 109 (P. C. R. 36). *See also* 6 W. R. 133; 15 W. R., P. C., 12.

19. In no case should the rights of wives and daughters be transferred to strangers or to more remote relations, unless the fact of adoption by which this transfer is effected be proved by evidence free from all suspicion of fraud, and so consistent and probable as to give no occasion for doubt of its truth.—(P. C.) 5 W. R., P. C.. 109 (P. C. R. 36).

20. Although the Hindoo law does not require written acknowledgment of adoption, yet it is usual for zemindars, when adopting sons, to acknowledge such adoption in writing, to give notice to the ruling power, and to invite the neighbouring zemindars and others to be present at such adoption.—*Ib.*

21. According to Hindoo law, a second adoption (the first adopted son still existing and remaining in possession of his character of a son) is invalid. The acquiescence of the first adopted son, after he came of age, in the division of property made by the adopting father between his two adopted sons, was not equivalent to a previous consent (binding on the first adopted son) to the disposition of the ancestral property by the father, but was binding on the first adopted son with regard to other property of which the father had the power of disposing by an act *inter vivos* without the consent of the first adopted son.—(P. C.) 7 W. R., P. C., 57 (P. C. R. 197). *See also* (P. C.) 19 W. R. 12.

22. An adoption may be made either by a man in his lifetime or by one of his wives after his death under a power conferred upon her for that purpose by her husband.—(P. C.) 7 W. R., P. C., 71 (P. C. R. 213; Sev. 489).

The absence of such power invalidates an adoption by a widow.—(P. C.) 15 W. R., P. C., 16.

23. According to the Hindoo law, a power to adopt may be given verbally.—(P. C.) 4 W. R., P. C., 116 (P. C. R. 294).

24. The widow of a childless member of a divided Hindoo family is entitled to a life interest in her husband's estate after the death of an adopted son before attaining majority. —*Ib.*

25. Where the validity of an adoption was disputed on the ground that it was made when the adopter was under pollution in consequence of the death of a relative, and there was a conflict of evidence as to the time of the relative's death, the Privy Council decided in favor of the adopter.—(P. C.) 1 W. R., P. C., 25 (P. C. R. 538).

26. A registered deed of permission to adopt, which contained no words of devise, was held not to be of a testamentary character.—(P. C.) 3 W. R., P. C., 15 (P. C. R. 574).

27. An adopted son takes by inheritance, and not by devise.—*Ib.*

28. A son cannot be adopted to the great-grandfather of the last taker after the lapse of several successive years, when all the spiritual purposes of a son would have been satisfied.—*Ib.* *But see* 22 W. R. 121.

29. A new heir by adoption cannot deprive a widow of her vested interests in her husband's unlimited estate.—*Ib.*

30. Mere gift of power of adoption to a widow cannot defeat the estate of the heir of a deceased son vested in possession.—*Ib.* *See* 21 W. R. 84.

31. Rule for testing validity of deed of adoption.—1 W. R. 144.

32. Under what circumstances an adoption may be recognized in the absence of original deed.—*Ib.*

33. Where a sale, in execution of a decree against an adoptive mother, is good as against the adopted son.—*Ib.*

34. But the estate of the adopted son is not liable for a debt of the adoptive mother without proof that the debt is other than personal. *Ib.*

35. Plaintiff's adoption, if in issue in a former suit and decided in his favor (though defendant was not a party), must be considered proved till defendant gets better evidence.—2 W. R. 167.

36. The Hindoo law does not allow the adoption of a *paluk pootro.*—2 W. R. 281.

37. An adopted son is not precluded from questioning his mother's acts during his minority or before his adoption, in like manner as any other reversioner; but a sale made by the widow, with the consent of all legal heirs then existing, and ratified by decrees of Court, is binding on the reversioners as well as on an adopted son adopted after the sale.—3 W. R. 14.

38. An adopted son has all the rights of a son born, and can succeed to a hereditary jagheer: but if he rests his title to succeed on a confirmatory sunnud, he is bound to prove the sunnud.—3 W. R. 24.

39. An adopted son has all the rights of a son born, and can succeed (whether with or without a will) to his mother's *streedhun* in the absence of daughters.—3 W. R. 49.

40. A son adopted by one wife may succeed to a co-wife's *streedhun.*—*Ib.*

HINDOO LAW (ADOPTION) (*continued*).

41. A Hindoo widow taking no steps to adopt until the death of the last male member of her husband's family, forfeits her right to adopt.—3 W. R. 66. *See* 15 W. R., P. C., 5.

42. A had permission from her husband (B), with the consent of his father (C), to adopt three sons in succession. B died before C, and C, before his death, executed a will leaving his property to A's adopted son, and appointing D executor, and directing him to take possession of the property until the adopted son came of age, when he was to be proprietor of his entire estate. After C's death A adopted E, who died before he came of age. *Held* (1) that the property vested in E on his adoption, although he was a minor, D being merely a manager; (2) that, under the Hindoo law, A was the legal representative of her adopted son E, and consequently entitled to a certificate under Act XXVII of 1860 as his legal heir; and (3) that A's title to the property was not contingent on her adopting three sons in succession, as a Hindoo widow, having permission to adopt, cannot be compelled to act up to that permission.—3 W. R., Mis., 6.

43. A widow succeeding as heir to her own son does not lose the right to exercise the power of adoption. By making an adoption, she diverts her own estate only.—7 W. R. 392.

44. Under the Mithila law, a Hindoo widow has power to adopt a son in the *kritima* form with or without her husband's consent: but such adopted son would not lose his position in his own family, or succeed to her husband's family, but to hers only.—7 W. R. 500, 8 W. R. 155. *See also* 25 W. R. 255.

45. Though a cousin cannot sue, as next heir, to set aside an adoption, he has a right to question the adoption if he takes under a deed such an interest as may be affected by the adoption.—8 W. R. 241.

46. An adopted son represents his adoptive father, and is entitled to his share, and takes the same share with heirs other than the legitimately begotten sons of his adoptive father.—9 W. R. 423.

47. A stranger, having no interest in the matter, has no right, even with the consent of presumptive reversionary heirs, to sue for an order declaring an adoption to be valid. —9 W. R. 463.

48. A writing under the hand of a deceased husband declaring that he gave his wife power to adopt, though not complete as a testamentary disposition, may yet be evidence of a declaration of fact.—*Ib.*

49. The adoption of an only son is contrary to the Hindoo law, and is therefore invalid.—10 W. R. 347.

Except by his father's brother, in which case he becomes the son of both brothers; but the fact of the existence of a brother's son does not deprive the uncle of the right to adopt any one save that son, the selection being finally a matter of conscience and discretion, not of absolute prescription.—23 W. R. 340.

50. Power of a childless Hindoo widow to adopt a son to her husband, with or without his permission, under the various schools of Hindoo law, considered. The difference between them relates rather to what shall be taken to constitute in cases of necessity evidence of authority from the husband, than to the authority to adopt being independent of the husband.—(P. C.) 10 W. R., P. C., 17.

According to the law prevalent in the Dravada country, a Hindoo widow, not having her husband's express permission, may, if duly authorized by his kindred, adopt a son to him. Rule indicated as to the kinsmen whose consent is essential.—(P. C.) *Ib.*

The permission must be given by some one within the undivided family, and having a direct interest in the estate, and not by a distant relative.—(P. C.) 25 W. R. 291.

There should be such proof of assent on the part of the *sapindas* as should be sufficient to support the inference that the adoption was made by the Hindoo widow, not from capricious or corrupt motives, or in order to defeat the interest of this or that *sapinda*, but upon a fair consideration by what may be called a family council, of the expediency of substituting an heir by adoption to the deceased husband.—(P. C.) 26 W. R. 21.

51. The giving and receiving of a child, in order to constitute adoption, must be actual, and not only constructive by the execution of deeds. Where a father, after the execution of such deeds, refused to give his child for the purpose of adoption, the other party was held to have a right to come to the Court for relief, and to ask to have the deeds declared void.—11 W. R. 196.

Reversed by Privy Council, who held that the deeds in form were not mere agreements to *give and take*, but deeds of gift and adoption, and that interchange was not necessary; that if the father gave, or was willing to give, the child, plaintiff had no right to sue for a declaratory decree on the ground that the deeds were null and void because of the non-performance of certain religious ceremonies; that the High Court in special appeal was wrong in deciding the issue as to actual delivery of the child when that issue had not been tried by the Lower Appellate Court; that the deeds were not actually necessary to render the adoption valid, and that, if they were set aside, the adoption might be proved *aliunde*.—(P. C.) 19 W. R. 133. *See* 19 W. R. 419.

52. Where there is satisfactory evidence of an adoption which has been recognized for years, and property has devolved on the adopted party as such, no proof is needed of the performance of the ceremonies; and unless their non-performance is proved, the party adopted may enforce his rights.—11 W. R. 380, 18 W. R. 77.

53. Where, on the death of a minor, the widowed mother (P) makes an adoption, and her daughter sues as guardian of her minor son (S C) born 17 years after the adoption, for the property left to his maternal uncle,—*Held* that S C's cause of action arises on P's death; that he is entitled on his birth to question the adoption; that he need not sue till 3 years after his majority; and that a suit by his guardian during his minority is not bound by limitation.—11 W. R. 468.

54. The mere notice that an adoption has taken place is not of itself a cause of action upon which a reversioner is bound to sue, and from the date of which therefore limitation will run.—11 W. R. 177.

55. Persons claiming an estate as the adopted children of a widow to whom the estate belonged, are entitled to prove their own adoption and the widow's possession in her own right.—12 W. R. 120.

56. Consanguinity does not invalidate an adoption where the parties involved do not belong to any of the three regenerated castes.—12 W. R. 356.

57. When a widow adopts a son under the authority of her husband, such authority must be strictly pursued. The son adopted is adopted to the husband, and not to the widow; and an adoption by the widow alone would not, for any purpose required by the Hindoo law, give to the adopted child, even after the widow's death, any right to the property inherited by her from her husband.—(P. C.) 12 W. R., P. C., 1.

58. Where the Privy Council, in the absence of strong documentary evidence confirmatory of an adoption, and on a consideration of the probabilities of the case, reversed the judgment of the High Court upholding the adoption, and confirmed that of the Judge of the original Court who saw and heard the witnesses and considered the witnesses in support of the adoption unworthy of credit.—(P. C.) 12 W. R., P. C., 29.

59. In a case of alleged adoption by deed of gift of a son as *paluk pootro*, it was held that the terms of the deed did not import the adoption of a son by gift, and that it was only by reason of the gift that the filial relation to the natural father was extinguished, or the right of the son in the estate of the giver ceased.—(P. C.) *Ib.*

60. Besides giving and taking, there are other ceremonies performed by Brahmins among people of the Soodra caste which are considered essential to the validity of an adoption.—13 W. R. 168. *But see* 15 W. R. 300, and (*overruled by F. B.*) *see* 70 *post*.

61. The case of a Hindoo claiming by adoption under a testamentary disposition which was put forward shortly after the testator's death, and which was acted upon and recognized for a period of 27 years by the whole family, the validity of which power was questioned in a suit brought by the person adopted against members of the family, was considered to be analogous to a case in which the legitimacy of a person in possession is questioned, long after his possession has been acquired, by a party who has a strict legal right to question his legitimacy, and in which the defendant

HINDOO LAW (ADOPTION) (*continued*).

is entitled to invoke every presumption which reasonably arises from the long recognition of his legitimacy by members of the family or other persons.—(P. C.) 15 W. R., P. C., 41.

62. A childless Hindoo is bound to adopt a son.—15 W. R. 548.

63. An adoption is not invalidated, or liable to any civil disability, by the mere fact of the adoptive father being a minor, if he has attained to years of discretion.—*Ib.* *See also* 19 W. R. 127, (P. C.) 25 W. R. 235.

64. The performance of the *pootroshto jag* is essential to the validity of an adoption in the Dattaka form.—16 W. R. 179.

65. The consent of the party adopted is essential to the validity of an adoption in the Kritima form.—*Ib.*

66. Registration of deeds giving widows power to adopt, recommended.—(P. C.) 18 W. R. 221.

67. Where the presumption against an adoption arising from the neglect of the widow of the Rajah of Nattore to adopt for 6 or 7 years after the death of the Rajah was considered not so great as the presumption in favor of the Rajah having the power to adopt.—(P. C.) *Ib.*

68. No suit can be maintained for an order directing a minor Hindoo widow to make an adoption; nor is this a case in which a decree can be made declaring the validity of such a direction.—19 W. R. 127.

70. Amongst Soodras in Bengal no ceremonies are necessary to make a valid adoption, in addition to the giving and taking of the child in adoption.—(F. B.) 21 W. R. 285.

71. The adoption of a son after payment of price is not recognized in the present (or Kali) Yuga; the only adoption now recognized being that of a *dattaka* or son given.—21 W. R. 381.

72. A contract as to such an adoption could not be enforced, for it would come within the meaning of s. 23 Act IX of 1872 as immoral and contrary to public policy.—*Ib.*

73. A Hindoo executed an *unoomotee potro* to his wife to adopt five sons in succession, and on the death (10 or 12 years later) of the first adopted son, she adopted another son, whose adoption it was now sought to have declared invalid on the ground that the first son lived long enough to secure the spiritual benefit for which the deed was executed. *Held* that a son in the situation of the first adopted son could not exhaust the whole of the spiritual benefit which a son was capable of conferring on his deceased father.—22 W. R. 121.

74. Where a Hindoo widow succeeds to the estate of her adopted son on his death as his heir, and then alienates the property, the subsequent adoption by her of another son cannot divest the alienee of his rights under the alienation previously effected.—24 W. R. 183.

75. Where a deed was executed signifying that the intention of the party executing it was, if certain approval was obtained, to take a boy in adoption as his son, and the boy was not given or accepted, and no ceremonies of any kind were performed,—*Held* that the adoption was invalid, and that the deed being provisional and intended to be acted upon during the life of such executing party, who moreover had not sufficient capacity to make a testamentary disposition, was not a will.—25 W. R. 192.

76. Where a minor is not under the Court of Wards, but has attained years of discretion according to the Hindoo law, he is not incapacitated from executing an instrument authorizing his widow to adopt a son by reason of his not having attained the age of 18 years.—(P. C.) 25 W. R. 235.

77. Where an estate descends to the natural-born son of the original zemindar, and on the death of the son the widow of the original zemindar takes it as mother and heiress of her son and not immediately from her husband, the widow may adopt a son to her husband.—(P. C.) 26 W. R. 21.

78. Where a will was to the effect "I declare that I give my property to K whom I have adopted," followed by the direction "my wives shall perform the ceremonies according to the Shastras and bring him up," the Privy Council held that the gift of his property by the testator to a designated person was absolute, and that the provision "Should this adopted son die and my younger brother have more than one son, then my wives shall adopt a son of his" further indicated that the testator did not contemplate his widows having the power of cancelling the adoption of K, and ousting him from the benefit he was to take under the will by declining to perform the ceremonies, but that, whether they performed the ceremonies or not, so long as K lived, no other adoption could take place.—(P. C.) 26 W. R. 91.

See Ancestral Property 18.
Bond 12.
Certificate 34, 44, 50, 75, 85, 105.
Declaratory Decree 5, 42.
Evidence (Documentary) 9.
,, (Estoppel) 29, 78, 117, 119.
,, (Oral) 49.
Heir 8.
Hindoo Law (Inheritance and Succession) 22, 30, 66, 112.
,, Widow 26, 43, 46, 47, 58, 63.
Judgment 13.
Landlord and Tenant 48.
Limitation 16, 62, 82, 122, 180.
,, (Act XIV of 1859) 74, 93, 94, 326.
,, (Act IX of 1871) 13, 14.
Maxims 1.
Onus Probandi 92, 163.
Res Judicata 75.
Sale 192.
Special Appeal 85.
Will 9, 20.

Hindoo Law (Alienation).

1. By Hindoo Widow.—*See* Hindoo Widow.

2. So far as the grantor of a *debuttur* estate retains any beneficial interest in the property, such interest capable of alienation by himself or his heirs.—2 Hay 160 (Marshall 303). *See* 13 W. R. 200.

3. An alienation made by the managing member of a joint Hindoo family cannot be questioned by another member, if he stands by and sees to the application of the purchase-money for the benefit of the whole family without refusing to participate in it.—2 Hay 567.

4. A son under the Mitacshara law must sue to recover ancestral property improperly alienated by his father, within 12 years from the father's death.—W. R. Sp. 96.

5. According to the Mitacshara law, a suit by a son to set aside alienations by his father must be brought within 12 years from the date of alienation, or within 12 years from the date of the son attaining majority, supposing the alienations to have been made during his minority.—W. R. Sp. 215.

6. Under the Mitacshara law, a son's power to prevent alienations by the father extends to acts of waste, and not to alienations for the payment of joint family debts and for the maintenance of the family.—1 W. R. 96.

7. Under the Mithila law, limitation can be pleaded as a bar to a suit to set aside an alienation by a grandfather, the cause of action in such a case arising, not from the date of the grandfather's death, but from the date of the alienation.—1 W. R. 283.

8. Where neither want of enquiry nor *mala fides* is shown, the existence of legal necessity must be presumed.—*Ib.*

9. In a suit to set aside alienations made by plaintiff's grandmother, plaintiff's mother (the immediate reversioner) being in possession of a part of the property comprised in the disputed alienations, and not being in a position to institute proceedings,—*Held* that plaintiff, as the next reversioner, was entitled to sue to protect his own future rights.—2 W. R. 255.

10. In a suit by a son to annul an alienation of ancestral property by his father, the *onus* is not on the son to prove the absence of necessity for the sale, but on the purchaser to prove the existence of necessity.—2 W. R. 292.

11. The paying off of an ancestral debt incurred for the due performance of marriage and funeral expenses, etc., was held to be a legal necessity in such a case.—*Ib.* *See* 16 W. R. 52.

HINDOO LAW (ALIENATION) (*continued*).

12. Under the Mitacshara law, a son may sue to obtain a declaration that sales by his father cannot affect any rights possessed by him in the property, and that the property still in the father's hands is ancestral and cannot be alienated except under certain circumstances.—3 W. R. 102.

13. According to the Mitacshara, a conveyance or transfer of joint property by one member of a family is illegal without the consent of the other members.—3 W. R. 210. *See* 12 W. R. F. B. 1, 15 W. R. F. B. 6, (P. C.) 25 W. R. 285.

Or by the *kurta* in the absence of such necessity as will in the eye of the law give the *kurta* power to alien.—20 W. R. 192, 22 W. R. 552.

So also an alienation by a son without his father's consent.—7 W. R. 449, 12 W. R. 446.

14. The Mitacshara makes a distinction between ancestral and self-acquired property, with regard to a father's right to dispose of it; but such right is not affected by the fact of his being an outcaste.—6 W. R. 77.

15. The incapacity of joint owners confers powers of alienation in certain cases of necessity upon the managing owner.—7 W. R. 5.

16. An alienation made by a Hindoo with the consent of his son, cannot, under the Mitacshara, be questioned by the grandson.—9 W. R. 337.

17. A mokurruree lease of ancestral property granted by the father of a family to his Dewan without the consent of his infant children, is invalid under the Mitacshara law.—11 W. R. 343.

18. The alienation of *debuttur* land by a *Sebait*, like an alienation of ancestral property by a Hindoo widow, is only justifiable on proof of necessity. 12 W. R. 299. *See also* 15 W. R. 228.

19. If a larger sum of money be borrowed or raised by sale than is required for a legal necessity, and a larger portion of the estate mortgaged or sold than is necessary for the purpose of raising the sum legally required, the vendees or mortgagees will be entitled to a charge upon the lands mortgaged or sold to the extent of the money required and taken up for purposes for which the Hindoo law justifies alienation of a minor's estate during his minority.—12 W. R. 478.

20. The fact of there being a decree, an attachment, and a proclamation for sale, was held to be a sufficient pressure justifying an alienation.—11 W. R. 72.

21. Under the Mitacshara, a son cannot control his father's power of alienation in respect of property the succession to which is liable to obstruction.—18 W. R. 477.

22. The Mitacshara law requires the son's consent to an alienation by the father; but the fact of the son being in debt does not incapacitate him from consenting.—(P. C.) 20 W. R. 137.

23. In a suit to avoid alienations effected by plaintiff's father at a time when plaintiff was of age and was living in commensality with his father and enjoying the property as a member of the joint family, which suit was brought after 12 or 13 years without any objection by plaintiff save the filing of a petition of protest in a Court of Justice whereof the vendees were not made aware, the plaintiff was held to have consented to the alienations.—21 W. R. 12.

24. An alienation of property during the owner's minority is open to be questioned when the minor comes of age, even if it was effected partly through the intervention of a Civil Court, *e.g.* under a decree or foreclosure proceedings.—22 W. R. 119.

25. A specification of the cases showing the limitations of the power of a single member of a Hindoo family to alien the family property.—25 W. R. 532.

See Ancestral Property 11, 12, 14, 15, 17, 18, 19, 20.
Declaratory Decree 32.
Endowment 45, 46, 49, 66.
Gift 4, 5, 49.
Hindoo Law (Adoption) 74.
" " (Coparcenary) 55, 102.
" " (Inheritance and Succession) 76.
" " (Sale).
Lease 15, 85.
Limitation (Act XIV of 1859) 162.
See Loan 2, 8.
Mokurruree Tenure 80.
Mortgage 84, 210, 279.
Onus Probandi 164, 167.
Putnee Talook 41.
Self-acquired Property 6.

Hindoo Law (Coparcenary).

1. In a joint Hindoo family, the mere use of one brother's name in documents relating to property affords no presumption of his being sole proprietor, particularly when he is the eldest brother or the managing member of that family.—W. R. F. B. 3. (1 Hay 20, Marshall 1). *See also* 7 W. R. 120, 20 W. R. 342.

2. Deeds of sale and mortgage and mutations of names in the Collector's register as amongst members of a Hindoo family, are evidence of separation.—W. R. F. B. 18 (1 Hay 119).

3. Where a party sues for a moiety of certain property on the ground that it is joint, he is bound to prove that the property is joint.—W. R. F. B. 57 (1 Hay 433).

4. Properties purchased in one brother's name in a joint Hindoo family must be held to be joint, and not self-acquired and separate; and the *onus* of rebutting such a presumption falls upon the party making the special plea.—1 Hay 374 (Marshall 169), 3 W. R. 31, 23 W. R. 422.

5. The possession of the managing or one member of a joint Hindoo family is not adverse possession against the other members.—2 Hay 311, 1 W. R. 74, 2 W. R. 181.

6. When a property is purchased in the name of one member of a joint Hindoo family, the presumption, according to Hindoo law, is that it is purchased out of the joint fund.—2 Hay 333. *See also* 18 W. R. 459, (P. C.) 19 W. R. 356, 20 W. R. 65.

7. The mere circumstance that one of several brothers of a Hindoo family occupied a separate dwelling-house, does not rebut the presumption of the family being joint, if it appear that they dealt with the family property as joint property.—Marshall 671.

8. Joint possession by the widow and elder brother of a deceased person is not *primâ facie* evidence of her title to her husband's share of the property, or of her right to grant a putnee of it. Even if it were so, the husband's will, admitted by the widow to be genuine, under which she had no power to grant a putnee, would rebut the *primâ facie* case.—1 R. J. P. J. 52.

9. Where a loan of money was made by the manager of a Hindoo family when it was joint, the presumption is that it was made from the common stock.—Sev. 40*a*.

10. Where the rights and interests of one of the proprietors of a joint family dwelling-house were sold in execution of a decree, the Court, taking into consideration the known usages of joint Hindoo families and the harassment and perhaps disgrace which the intrusion of a stranger into premises hitherto held joint would occasion to the joint family, required the purchaser to elect to receive either her purchase-money with interest from date of payment, or a fair valuation of the share purchased by her in commutation of her claim to separate possession.—Sev. 42. *But see* 35, 47 *post*.

11. The mere fact of commensality is not alone sufficient to establish the fact or presumption of a family being joint in estate, but it is important to trace the family as far back as possible with the view of ascertaining whether the nucleus of the estate was originally joint or separate.—Sev. 158. *See also* 9 W. R. 87, 10 W. R. 333, 11 W. R. 499. *But see* 19 W. R. 178.

12. The Court declined to allow one member of a joint Hindoo family living in partnership, many years after a formal separation had taken place, to call the other partners to account for transactions of years during which no balance was struck and no share of profits was ever declared or assigned, merely on the ground that one partner had drawn out of the firm more than his share of funds.—Sev. 231.

13. The presumption of Hindoo law is that, when a family is living in a joint and undivided condition, all the property of the family is joint, and all the property newly

HINDOO LAW (COPARCENARY) (*continued*).

acquired, whether in the joint names of several members of the family or in that of one member, is the common property of the family.—Sev. 801. *See also* 15 W. R. 446, 21 W. R. 343. *But see* 14 W. R. 339.

The increment must follow the same rule as the *corpus*.—17 W. R. 528.

14. The original *status* of all Hindoo families must be presumed to be joint and undivided. The *onus probandi* is on those who put forward claims upon the basis of separation and self-acquisition. Proof of separation of shares is not sufficient to shift the burden of proof.—W. R. Sp. 1; 1 W. R. 334; 3 W. R. 21, 31; 5 W. R. 145, 278; 6 W. R. 35, 69; (P. C.) 12 W. R., P. C., 21; 12 W. R. 124; 18 W. R. 258; 19 W. R. 178; 20 W. R. 65, 158, 342; 21 W. R. 343; 22 W. R. 116, (O. J.) 248; 25 W. R. 232.

15. Where no consideration has been paid or applied towards meeting any necessary expenses of a joint Hindoo family, the elder brother cannot grant a permanent lease of land, and long possession under such an invalid pottah cannot avail against the minor brothers.—W. R. Sp. 83.

16. Where a father and son live as a joint family and property is purchased in the name of the son, the presumption is that it was joint estate, with a resulting trust in the father.—W. R. Sp. 103.

17. Where a Hindoo estate is held joint and undivided, the succession *to it* must be determined only by the state of the family *as to it*.—W. R. Sp. 197.

18. The managing member of a family cannot transfer the property of the debtor (his father) to one member of the family unknown to the creditor.—W. R. Sp. 383 (L. R. 156).

19. There being disputes in a joint Hindoo family with respect to the property acquired by the father, the parties agreed to refer the matter to arbitration, and pending arbitration, agreed to pay their equal proportions of a joint debt effected on the common family property, and not to allow the payment under this agreement to be delayed by any division of the family property or by the settlement of the debts due to the family. *Held* that the parties were bound by the agreement to contribute towards payment of the debt according to the interest they respectively had in the family estate.—(P. C.) 5 W. R., P. C., 39 (P. C. R. 61).

20. Where a Hindoo family lives joint in food and estate, the presumption of law is that all the property they are in possession of is joint property until it is shown by evidence that one member of the family is possessed of separate property.—(P. C.) 6 W. R., P. C., 43 (P. C. R. 117). 19 W. R. 178. *See* 11 W. R. 305, 436; 21 W. R. 343.

21. The purchase of a portion of the property in the name of one member of the family, and the existence of receipts in his name respecting it, may be perfectly consistent with the notion of its being joint. The criterion in such cases in India is to consider from what source the purchase-money comes.—*Ib. But see* 10 W. R. 122, 17 W. R. 98.

22. Illegitimate sons of a Christian father by different Hindoo women, although by agreement they constituted themselves parceners in the enjoyment of their property after the manner of a joint Hindoo family, are not a joint Hindoo family according to Hindoo law. On the death of each, his lineal heirs representing their parent would, by the effect of the agreement, enter into that partnership.—(P. C.) 2 W. R., P. C., 4 (P. C. R. 452).

22*a*. According to Hindoo law, there is a coparcenaryship between the different members of a joint family and survivorship following upon it; there is a community of interest and unity of possession between all the members of the family; and upon the death of any one of them, the others take by survivorship that in which during the deceased's lifetime they had a common interest and a common possession.—(P. C.) 2 W. R., P. C., 31 (P. C. R. 520); 8 W. R. 116; 13 W. R., P. C., 21.

23. The presumption of Hindoo law is that property not shown to be separate is joint. Where an elder brother is long in the management of the joint estate and in the receipt of the collections from it, and is accountable for them to his younger brother, if the moneys employed in the purchase of certain talooks formed part of those drawn from the joint estate, the younger brother, on a re-union, is entitled upon the general principles of Hindoo law and independently of the express powers of any deed of agreement executed between the parties, to share in them as acquisitions made by the use of the joint funds.—(P. C.) 5 W. R., P. C., 11 (P. C. R. 609). *See also* 16 W. R. 291.

24. A, one of four brothers in joint possession of ancestral property, separated himself in food, worship, and estate, leaving his three brothers jointly possessed of their undivided three-fourths shares. A dies unassociated, leaving a son and heir (B). The three brothers continued and died associated, two without heirs, and the third leaving a son and heir (C). B has no claim to any part of the undivided three-fourths shares as against C, who takes the whole absolutely.—1 Hyde 214.

25. Property held in the name of one member of a joint Hindoo family must not be presumed to be separate property. Junior members, whose rights are sold away without proof of the property being separate, and without any allegation that the transaction was for the benefit of the family jointly, have their remedy against the purchaser.—1 W. R. 38. *See also* 10 W. R. 241.

26. When the presumption of joint property is rebutted by production of an exclusive and separate title, the party against whom such a title is produced is bound to show that the title is not exclusive and separate.—1 W. R. 107; 5 W. R. 145.

27. Where joint acquisition is alleged, the fact of purchase having been made in the name of one member of the family, and other acts having been similarly done, are insufficient to prove separate possession.—1 W. R. 306, 6 W. R. 69.

28. The *status* of a Hindoo family being joint is a sufficient notice to a purchaser that, in purchasing from one member of that family, he was not making a *bonâ fide* purchase.—1 W. R. 316. *But see* 20 W. R. 100.

29. According to Hindoo law, one brother is the manager and trustee for another brother's widow, and his possession is not adverse to her.—1 W. R. 359.

Nor does his paying the rents of the family property to the superior holder and giving dakhilas for rent indicate possession adverse to her.—21 W. R. 249.

30. A verbal consent by one of two brothers to a gift of joint property is binding on the other unless the latter's rights and interests are separate and not affected by any acts of his brother.—2 W. R. 4.

31. Where property is acquired while a Hindoo family is joint, the inheritance (according to the Bengal law) goes *per capita* and not *per stirpes*.—2 W. R. 11.

32. Some brothers having possessed property jointly, the presumption is that their representatives are entitled only to the shares which belonged to the brothers under whom they respectively claim.—2 W. R. 123.

33. In a suit for a share of joint ancestral property, plaintiff, if not estopped by the circumstance that he claims under one who, when sued on a former occasion as trustee, never pleaded that the property was joint, is bound to show that the property is joint.—2 W. R. 264.

34. The presumption obtains of the continuance of the joint right of a member of a joint Hindoo family to ancestral property, unless he is shown to have parted with that right.—2 W. R. 288.

35. The purchaser, at a sale in execution of a decree, of a share of a member of a joint family, is entitled to be put in actual possession of his share of the family dwelling-house. (F. B.) 2 W. R., Mis., 30; 8 W. R. 239. *See* 10 *ante* and 47 *post*.

36. One shareholder cannot resist the revocation by another of the authority given to a manager, when there is no express stipulation in the deed providing for the appointment of a manager, that the authority should continue for a definite time.—3 W. R. 41.

37. In suit for a share in a joint family property, the *onus* of approving joint enjoyment of the property within 12 years is on the plaintiff. But proof by him of receipt of payment on account of his share within 12 years will save his suit from limitation under cl. 13 s. 1 Act XIV of 1859, and throw on the defendant the *onus* of proving his plea of separate property.—3 W. R. 173. *See also* 19 W. R. 192.

38. According to the Mitacshara, where (notwithstanding a separation in food and residence) no formal partition of the family estate has taken place, the family must be

HINDOO LAW (COPARCENARY) (*continued*).

considered joint and undivided; and in such a case a widow cannot succeed to, or retain possession of, her husband's share as against his surviving brothers, but is only entitled to maintenance.—5 W. R. 78, 176; 9 W. R. 61. *See* 10 W. R. 148, 25 W. R. 355.

39. In such a case also, the withdrawal by her husband's brothers of their claim to his share, cannot give the widow a title to succeed to it.—5 W. R. 176.

40. In a suit by the purchaser of a decree for the debtor's share in a family dwelling-house with gardens and tanks, where the suit is for ground as well as for chambers, the plaintiff is entitled to an adjudication of his claim to the land.—5 W. R. 218.

41. An admission by one brother that a lease was joint property, is, though not an estoppel, yet good evidence against his widow that it was not self-acquired.—6 W. R. 35.

42. The rule of Hindoo law that joint family property must be presumed to be such until the contrary be proved, applies where the property, after sale to third parties, is redeemed by private purchase by one of the former share-holders.—6 W. R. 58.

43. Where the rights and interests of three brothers of a joint family were sold in execution, a suit brought, not to set aside such sale, but in right of inheritance of the judgment-debtor's brother's share in the family property, was held not bound by limitation under cl. 5 s. 1 Act XIV and s. 246 Act VIII.—6 W. R. 69.

44. Before female heirs can be excluded from succession to a husband or father under the Mitacshara, on the ground that the estate was joint, it must be shown to have been so at the time of his death.—6 W. R. 101.

45. Where neither misdescription of shares in another suit, nor partition made by some of the coparceners in opposition to the description of the shares now given by plaintiff, was held to operate as an estoppel.—6 W. R. 176.

46. An admission made under mistake by a co-parcener as defendant in another suit, was not held binding on him as plaintiff in the present suit.—*Ib.*

47. In a suit for possession of a judgment-debtor's share in a family residence, possession was ordered to be given to him so as not to annoy or insult the inmates of the house; but as plaintiff could not use the family staircase without exposing the ladies of the family to annoyance and was obliged to build a separate staircase, he was declared entitled to compensation to the value of his share in the family staircase.—6 W. R., Mis., 75.

48. Re-union of a joint Hindoo family. *See* Hindoo Law (Inheritance and Succession) 61. *See also* 65, 68, 72 *post.*

49. A minor brother's share in a joint family estate was held not liable under a sale-advertisement which referred solely to the rights and interests of his elder brothers who did not represent him.—7 W. R. 144.

50. The presumption of Hindoo law as to joint property cannot apply in a case where the property is claimed through a son-in-law living in the house of his father-in-law.—7 W. R. 249.

51. Where the Mitacshara prevails, the widow of a member of a joint Hindoo family cannot succeed to her husband in preference to his brother, nor is she heir to her brother-in-law or his widow after their death.—7 W. R. 292, 440.

52. So long as no partition of a joint estate is proved, the presumption is that the property is joint. The fact that certain parcels are admittedly held in severalty does not rebut the presumption as regards the rest of the joint estate.—7 W. R. 451.

53. Where money was borrowed by a near relative of a joint Hindoo family holding part of the ancestral property and appearing before the world as a co-parcener of the family, to pay off a *bonâ fide* ancestral debt, the loan was held to be a family and not a personal debt.—7 W. R. 490.

54. The fact of an old factory remaining joint when the rest of the joint property was partitioned, is no proof that the shareholders agreed to continue working it, or never to raise new ones.—8 W. R. 87.

55. If a member of a joint Hindoo family converts the proceeds of the joint ancestral property in the purchase of other estates, he does so for the benefit of the joint family; and without the consent of all the members, or legal necessity, or a declaration and acts amounting to a division, he cannot alienate so as to bind even his own share.—8 W. R. 182.

Until a division is affected no members of the family can give a stranger any interest in the property or a right to sue.—21 W. R. 190.

56. Where the existence of joint family property is admitted, the presumption is that all acquired property belongs to the family, and the *onus* is on him who sets up a plea of self-acquisition, to prove that the joint estate was so small that, after providing for the maintenance of the family, nothing remained to form a fund for the purchase of other properties for the benefit of the joint family.—8 W. R. 226.

57. Character of the strict proof required of an auction-purchaser of the rights of a member of a joint Hindoo family to rebut presumption in favor of joint estate.—8 W. R. 294.

58. A member of a joint Hindoo family can sue alone to obtain compensation for loss to himself personally caused by wrongful destruction of property in which he had a definite share.—9 W. R. 279.

59. Position of the *kurta* or managing member of a joint Hindoo family with regard to the other adult and minor members.—9 W. R. 483. *See* 13 W. R. F. B. 75.

60. The presumption of Hindoo law as to joint property does not apply to a case in which eleven years after separation one of the parties sues the others, alleging that certain immoveable property possessed by them on the allegation of exclusive purchase was acquired by joint ancestral income.—9 W. R. 558.

61. The evidence of members of the family is the best evidence as to whether parties are joint or separate, account books being simply corroborative.—10 W. R. 148.

62. A plaintiff failing to prove his claim to property as the separate property of his vendor, cannot have a decree for a share to which the vendor is entitled as a member of a joint Hindoo family.—10 W. R. 243.

63. Where property is purchased by a member of a joint Hindoo family, the fact of his living jointly or in commensality with others affords no presumption as to the source of the purchase-money.—10 W. R. 328.

64. The managing member of a joint Hindoo family can be sued by the other members for an account, even if the parties suing were minors during the period for which the accounts are asked.—(F. B.) 13 W. R. F. B. 75.

65. A Hindoo family, consisting of persons in a near connection to each other, may separate and then re-unite; part also may re-unite, and such re-united members may impress on their re-united property, by common family consent, such trusts as their law will support.—(P. C.) 13 W. R., P. C., 14.

66. Where the Privy Council upheld the concurrent finding of the Lower Courts upon the evidence that property which had been originally self-acquired had come into a common stock and become joint property.—(P. C.) 15 W. R., P. C., 1.

67. By the common law of Hindoostan, the descent is in coparcenary where no other custom or right is proved.—(P. C.) 15 W. R., P. C., 10.

68. Where one member of a joint family separates and the other members continue to live and mess together, these others must be presumed to have re-united.—15 W. R. 200.

69. The fact of plaintiffs and judgment-debtor being members of a joint family does not create the presumption that certain property sold in execution is joint; and plaintiffs having once alleged separation, the *onus* is on them to prove that it was held joint.—15 W. R. 238.

70. Where part of the family property is proved to be joint, and the members live in commensality, there is a very warrantable presumption, according to Hindoo law, that the family is joint.—15 W. R. 301.

71. The wives and mothers of a joint Hindoo family are as much members of the family as their husbands and sons; and where property is purchased in the name of a female member during the lifetime of her minor son, the presumption of joint acquisition is not rebutted by the fact of her name being entered in the Collector's books.—15 W. R. 357.

72. The mere fact of two brothers living in the same dwelling-house is not conclusive proof of their living as a re-united or joint family.—15 W. R. 442.

73. The manager of joint family property cannot found any right to sell a part of it on the presumption of consent of the other members, however such presumption may avail the purchasers.—15 W. R. 467.

HINDOO LAW (COPARCENARY) (*continued*).

74. Regarding dispute relative to the rebuilding of a verandah in a family house which was pulled down by one of the members.—16 W. R. 38.

75. In a suit for property acquired from the proceeds of an alleged joint trade, the joint character of which is neither admitted nor proved, the *onus* lies in the first instance on the plaintiff, who is not entitled, under the circumstances, to the ordinary presumption of Hindoo law arising from the existence of joint family estate.—16 W. R. 162.

76. The fact of a settlement being made with one member of a joint family does not negative the rights of the other members to participation; nor is it necessary for the latter, if living in commensality with the former, to prove actual contribution of money towards the acquisition of the property.—16 W. R. 265.

77. No such custom exists as makes every member of a joint family bound by an agreement made by the head of that family, so as to allow (as in this case) the rent of a joint tenure to be enhanced on the strength of an *ekrar* executed by one of the coparceners.—17 W. R. 138.

78. The presumption of joint property and joint acquisition was held to apply where one brother remitted money to another without receipt or statement of accountability. —17 W. R. 564.

79. Also where all were sued jointly on a bond and one discharged the debt.—*Ib.*

80. The cesser of commensality serves to remove and qualify the presumption, which the Hindoo law might otherwise raise, that an acquisition made in the name of an individual son of the family was made by the head of the family and as part of the family estate.—(P. C.) 18 W. R. 69.

81. It must not be presumed that, because the elder branch of a joint family separates from the younger branch, the members of the younger branch have separated among themselves.—18 W. R. 459.

82. In a suit between brothers who had been in joint possession of property of various kinds and carried on joint business until an alleged recent partition, where plaintiff sought to recover a proportion, equal to his share, of a sum of money said to have been taken by defendant from the joint funds,—*Held* that, unless plaintiff could show that all the joint property had been divided excepting the sum in question, or that all the property had been divided and on an adjustment of accounts of past expenses there was a loss equal in amount to that item, he had no cause of action to sue for a moiety thereof.—19 W. R. 43.

83. Every Hindoo family is presumably joint in food, worship, and estate; and the presumption is that it remains undivided.—19 W. R. 178.

84. If a member of such family is found to be in possession of any property, the family being presumed to be joint in estate, the presumption would be that he was in possession of it as a member of a joint family; the *onus* being on the person who sets up a different state of things, to rebut the presumption.—*Ib.* *See also* (O. J.) 22 W. R. 248 (*and the cases therein considered*), 25 W. R. 232. *But see* 20 W. R. 65.

85. Members of a joint family residing on joint premises are entitled, on the occurrence of a dispute among themselves, to come into Court and ask to have their proper share assigned. The fact of their not having been in possession of a particular portion of those premises is no bar by way of limitation to a claim for such portion.—19 W. R. 189.

86. There is no ground for the exclusion of a Hindoo widow from such claim, for, as the law now stands, she may marry and have issue.—*Ib.*

87. Property purchased by a member of a joint family with money belonging exclusively to himself, is his separate acquisition, in which the other members are not entitled to share.—19 W. R. 228.

88. Property purchased by a member of a joint family with money out of the common estate is family property, even if purchased in the name of his son. If also the son is a certified purchaser at a sale under Act I of 1845, the other members of the family are not debarred by s. 21 from claiming a share of the purchase as joint property.—*Ib.*

89. Under Hindoo law, the exclusive possession of a plot of a common dwelling-house, or set of dwelling-houses, which one member of a joint family obtains very commonly without actual partition, must be referred to the continuing consent of his co-sharers. So long as no actual partition is come to, and this peculiar state of exclusive possession is allowed to remain, it must be taken to involve a concession of all such reasonable rights of user as are necessary for the ordinary purposes of residence, having regard to the circumstances of Hindoo life.—20 W. R. 160.

90. Where one member of a joint family is allowed by the other members to have separate and exclusive possession of family property for many years, they knowingly give him the opportunity of creating subordinate rights and cannot afterwards repudiate them.—20 W. R. 288.

91. Where, on the execution of an *ex-parte* decree for money to be paid out of the estate of a deceased party, his son, being one of the defendants representing the estate, instead of objecting under s. 203 Act VIII, asks for time to pay the amount, it was presumed that the property was not the self-acquired property of the son, but the joint property of the family.—21 W. R. 117.

92. Where the joint property of an undivided family governed by the Mitacshara law is enjoyed in its entirety by the whole family and not in shares by the members, one member has not such an interest therein as is capable of being taken charge of and separately managed under Act XL of 1858.—21 W. R. 143, 23 W. R. 206.

93. Although the members of a joint Hindoo family have all, in strict law, a right to participate in every portion of the joint property, that right may be modified by the conduct of the parties; *e.g.* when a particular member is allowed to retain sole possession of a garden and to improve and beautify it and to adapt it to his own purposes.—21 W. R. 222.

94. In a suit to establish plaintiff's right to a share in joint properties belonging to a family subject to the Mitacshara law, where a part of the property sued for was admitted to be joint,—*Held* that the presumption of Hindoo law was that the residue of the property was also joint, and that the *onus* lay with the defendants to prove separate acquisition without the aid of joint funds.—21 W. R. 343.

95. Where the members of a Hindoo family are living in a joint family house enjoying in common the produce of part of the joint property, the separate possession by any member of a specific portion of the joint property ought not to be treated as an exclusive or adverse possession against the other members.—*Ib.*

96. One member of a joint Hindoo family sued another, who was the manager, for a moiety of two items pertaining to the ancestral estate, which she alleged that the defendant had misappropriated. *Held* that the form of the suit was wrong, and that plaintiff should have sued for an account of the joint family property.—22 W. R. 202.

97. Where one member of a joint family sued for a share of a building (dwelling-house) in which she dwelt together with the defendant, being then joint in mess, and it appeared that the building was erected at the cost of the defendant and with his materials although on joint ground,—*Held* that although plaintiff was not entitled to any share of the building, yet the decree of the Court with regard to the land which plaintiff was to get in lieu of plaintiff's share of the site of the building ought to have specified what the land was to be or what the adequate or proper compensation for it was.—22 W. R. 348.

98. The use of the names of all the brothers of a joint Hindoo family in the title-deeds by which certain property in dispute was held, and in subsequent proceedings, was held sufficient to presume joint property.—24 W. R. 351.

99. The presumption that any acquisition by a joint Hindoo family is a joint acquisition unless the purchase-money is shown to have come from a separate source, is inapplicable to any case in which the acquisition is not shown to have been anterior to a partition which is alleged and proved to have occurred after the separation, and it is sufficient to rebut the presumption that a partition has taken place though not actually by metes and bounds.—25 W. R. 207.

100. It appearing that the relation between plaintiff and defendant (two brothers) could not be taken to be strictly that of the members of a joint and undivided Hindoo family, since although they were joint as to their general concerns and in some sense joint as members of a family, yet that relation was qualified by the provision contained

HINDOO LAW (COPARCENARY) (*continued*).

in a family arrangement whereby each member of the family might take out and use assets derived from a partnership firm for the benefit of his sole and separate speculations,—*Held* that plaintiff had failed to make out his right to throw his own and his brother's acquisitions into hotchpot and to claim an equal division of them.—(P. C.) 26 W. R. 17.

101. The above arrangement being of such an extraordinary character as to leave it in the power of each member to draw to an unlimited extent upon the assets of the firm, the Privy Council declined to extend the operation of such an agreement one iota beyond its terms, and were therefore of opinion that the High Court was right in drawing a distinction between pledging the credit of the firm and drawing out money actually belonging to the firm.—(P. C.) *Ib.*

102. Where, as a reward for good services rendered to the British Government during the Mutiny by an undivided Hindoo family in Oude, their lands had been exempted from confiscation and other forfeited lands were transferred to their possession,—*Held* that the grant of this property was made to one member of the family for the benefit of all the members; that Act I of 1869 conferred title in landed property; that the grantee acquired a permanent, heritable, and transferable right in the property; that he had, by an alienation *inter vivos*, transferred the property to the family to be held by them as joint property; and that the property was divisible among all the members of the family *per stirpes*, which was the prevailing mode, according to the Mitacshara law, in the absence of a family custom.—(P. C.) 26 W. R. 55.

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Vendor and Purchaser 64.
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Hindoo Law (Inheritance and Succession).

1. According to the Mitacshara law, a daughter or son's daughter does not inherit.—W. R. F. B. 75 (2 Hay 232).

2. A stepmother cannot take by inheritance.—(F. B.) W. R. F. B. 173 (Sev. 439).

3. According to the Bengal school, a father's brother's daughter's son cannot inherit.—W. R. F. B. 176 (L. R. 73), 1 W. R. 10, 12 W. R. 339. (*Over-ruled by F. B.*) 13 W. R. F. B. 49, 23 W. R. 117.

4. An uncle's son succeeds in preference to a childless widowed daughter.—1 Hay 67 (Marshall 29).

5. In certain extreme cases of crime or religious dereliction, the Hindoo law renders a son incapable of inheriting, and divests him of all his rights; but mere undutifulness and profligacy do not enable a father to disinherit his son of those rights which are inherent in him, irrespective of the mere will and pleasure of the father.—2 Hay 205 (Marshall 317).

6. Under the Mitacshara law, the son has a vested right of inheritance in the ancestral immoveable property, the ancestral property being only that actually inherited from ancestors, and not that which has been acquired or recovered, even though it may have been acquired from the income of the ancestral property, for the income is the property of the tenant for life: but the father can dispose as he likes of all acquired and personal property.—*Ib.*

7. According to the Bengal school, brother's daughter's sons or such relations are not heirs, the presumption being against the person claiming through a female.—2 Hay 401 (Marshall 398). (*Over-ruled by F. B.*) 13 W. R. F. B. 49.

8. The son of a Soodra by a slave girl is not entitled to share with legitimate sons in the inheritance of an uncle by the father's side.—Marshall 609. *See* 82 *post.*

9. The issue of the son of a *Sagyi* wife first married, was entitled to inherit the property of the grandfather, in priority to the issue of a son of a subsequent *byahi* wife.—Marshall 644.

10. According to the Mitacshara, a sister's son cannot inherit, the enumeration of Bundhoos or cognates who succeed, given in s. 6 cl. 2, being an exhaustive one.—L. R. 167. *See also* Sev. 460, 4 W. R. 13. *But see* 72 *post.*

11. By Hindoo law, a woman leading a profligate life forfeits all her rights of inheritance. Her being alive is no bar to an action by one who, after her exclusion by Hindoo law, is unquestionably the legal heir.—Sev. 44.

12. *Quære.* Whether a sister is legal heir to her brother. —Sev. 71.

13. A half-brother cannot inherit according to Hindoo law, and must be conclusively shown to have succeeded to property of his half-brother before he can be made liable for the latter's debt.—Sev. 101. *See also* 23 W. R. 395.

14. Held, in the absence of any positive authority on the

HINDOO LAW (INHERITANCE & SUCCESSION) (*continued*).

point, that a nephew, not born or conceived during the lifetime of the uncle, was entitled to succeed where there was no other preferential claimant; but that as his aunt had a life-interest in his uncle's estate, he, as reversioner, could not object during her lifetime to any arrangement she might choose to make in regard to the property, except in the case of waste and injury which gives a reversioner a cause of action.—Sev. 182.

15. According to the Bengal law, a posthumous sister's son, conceived at the time of his deceased uncle's death, was held entitled to succeed.—Sev. 238.

16. A nephew, born after the death of his uncle, cannot take as heir to his uncle.—Sev. 248.

17. According to the Mitacshara, a brother's daughter's son cannot inherit, and by parity of reasoning a brother's daughter cannot do so.—Sev. 433.

18. According to the Mitacshara, a sister cannot inherit. —Sev. 460. *See also* Sev. 742.

19. Where a father survived the son,—*Held* that the son never inherited from the father, and that the son's widow could not inherit from her husband.—Sev. 741.

20. A grandfather's daughter's son is an heir.—Sev. 742.

21. A brother's daughter's son has no right of succession. —Sev. 978. *See contra* 18 W. R. 331.

22. On the death of a son adopted by a Hindoo as the son of one of his two wives, the property descends not to the other wife, but to the next legal heir.—W. R. Sp. 71.

23. In certain cases a priest may, according to Hindoo law, be the heir of a deceased *boistom* or disciple.— W. R. Sp. 146.

24. The right of succession accrues to nephews (sister's sons), whether born before or after the death of their maternal uncle, not on the death of the maternal uncle, but on the death of his widow; and the nephews can sue to question the validity of alienations made by the widow without legal necessity.—W. R. Sp. 153.

25. *Somanodakas* belonging to the *gotra* of a deceased person are sufficiently cognate to succeed to property in default of parties nearer of kin.—W. R. Sp. 194.

26. A sister's son, in order to have a preferential title over his paternal uncle, must have been born or conceived when the succession opened out.—W. R. Sp. 223. *See* 15 W. R. 433.

27. An inheritance cannot remain in abeyance for an unbegotten heir (such not being a posthumous son); but the succession must vest in the heirs existing at the time of the death of the person whose inheritance descends.— W. R. Sp. 314 (L. R. 92).

28. Proprietary right is created by birth and not by conception. A child in the womb takes no estate. In cases where, when the succession opens out, a female member of the family has conceived, the inheritance remains in abeyance until the result of the conception can be ascertained. If the child be still-born, the estate goes not to her heir but to the heir of the last owner.—W. R. Sp. 340 (L. R. 116).

29. A son's or a grandson's right of prohibition to his unseparated father making a gift, donation, or sale of effects inherited from his grandfather, cannot be exercised in favor of an unborn son.—*Ib.*

30. According to Hindoo law, a person cannot succeed as the adopted son of a daughter who has brothers alive, and who cannot be an appointed daughter, if she had brothers when she married; nor can he succeed as claiming under a bought son.—(P. C.) 5 W. R., P. C., 114 (P. C. R. 41).

31. The question being whether the succession in this case was regulated by the Bengal or Mithila law,—*Held*, in accordance with the Court below, after an examination of the evidence, that the Mithila law was applicable.— (P. C.) 7 W. R., P. C., 41 (P. C. R. 178).

32. The question being whether the descent in the family in this case was to be regulated by the Dayabhaga or the Mitacshara,—*Held*, upon the evidence, that the Dayabhaga was applicable.—(P. C.) 7 W. R., P. C., 44 (P. C. R. 182).

33. Partibility is the general rule of Hindoo inheritance; the succession of one heir, as in the case of a Raj, the exception.—(P. C.) 4 W. R., P. C., 42 (P. C. R. 373); 12 W. R., P. C., 21.

34. Ancestral property is not confined to such property as the father derives from his father or any ancestor, but means at least immoveable property derived from the father however acquired by him.—(P. C.) 4 W. R., P. C., 46 (P. C. R. 378).

35. No words of inheritance are requisite to continue to his heirs a Hindoo's interest in a freehold estate.—(P. C.) 4 W. R., P. C., 51 (P. C. R. 383).

36. *Quære.* Whether the Hindoo law gives a right of inheritance to collaterals.—(P. C.) 2 W. R., P. C., 4 (P. C. R. 452).

37. The succession to a zemindaree in the nature of a Principality (impartible and capable of enjoyment by only one member of the family at a time) is governed (in the absence of a special custom of descent) by the general Hindoo law prevalent in the part of India in which the zemindaree is situated, with such qualifications only as flow from the impartible character of the subject.— (P. C.) 2 W. R., P. C., 31 (P. C. R. 520); 12 W. R., P. C., 21; 13 W. R., P. C., 21; (P. C.) 21 W. R. 89; 22 W. R. 17. *See* 20 W. R. 154, 189, 247.

38. The succession to such a zemindaree may be governed by a particular or customary canon of descent.—*Ib. See* (P. C.) 21 W. R. 255.

39. According to the Hindoo law, in Bombay at least, sisters are heirs of their brothers; and the marriage of daughters and their marriage portions do not exclude them from participation.—(P. C.) 3 W. R., P. C., 41 (P. C. R. 540). *See* 22 W. R. 496.

40. The rule of Hindoo law is that, in the case of inheritance, the person to succeed must be the heir of the last full owner. On the death of the last full owner, his wife succeeds as his heir to a widow's estate; and, on her death, the person to succeed is the heir at that time of the last full owner.—(P. C.) 3 W. R., P. C., 15 (P. C. R. 574). *See* 11 W. R., O. J., 11; 11 W. R. 468; 12 W. R. 487; 15 W. R. 412.

41. According to the Mitacshara, a sister's son cannot inherit.—(P. C.) 7 W. R., P. C., 25 (P. C. R. 681).

42. According to the Hindoo law, a brother's daughter's son is no heir, but (considering the unsettled state of the law on the point till recently) was allowed in this case to succeed as against a party holding under no title whatever. —1 W. R. 13.

43. Except in Bengal, a sister's son cannot inherit, according to the Mitacshara or Mithila school.—1 W. R. 74. *But see* 72 *post*.

44. A grandson born after the death of his maternal uncle, but during the lifetime of his maternal grandmother, may inherit from her the property which she inherited from the uncle (her son).—1 W. R. 123.

45. According to the Hindoo law, a Rajah has full right to nominate a *joobraj* or heir-apparent, and a whole or uterine brother has a preferable title to a half-brother.—1 W. R. 177. *See* 12 W. R., P. C., 21; 23 W. R. 395.

46. Byragees are not excluded from inheritance.— 1 W. R. 209.

47. According to Hindoo law, a sister cannot inherit as heir to her brother.—1 W. R. 227, 5 W. R. 214.

48. Under the Mitacshara law, a grandson (his father being dead) shares equally with a son the self-acquired property of the grandfather.—1 W. R. 317.

49. A son's next heir is entitled to succeed after the mother in preference to a sister's son born after the death of the mother.—1 W. R. 353.

50. According to Hindoo law, a brother's sister's son is not an heir.—1 W. R. 359.

51. According to Hindoo law, uterine and half brothers succeed equally to joint undivided property. —2 W. R. 41, 9 W. R. 87. (*Over-ruled*) *see* 23 W. R. 395 and F. B. ruling 114 *post*.

52. According to the Mitacshara, a step-brother inherits after the widows if he survives them, otherwise a uterine brother's son succeeds.—2 W. R. 123.

53. Where it is contended that a Hindoo is incapable of inheriting by reason of an incurable disease (*e.g.* leprosy), the strictest proof of the disease will be required.— 2 W. R. 125.

54. Married daughters are not excluded from succession by either the Dayabhaga or the Mitacshara.—2 W. R. 176. *See also* 6 W. R. 61.

55. According to Hindoo law, neither a sister nor a sister's daughter can inherit.—2 W. R. 180.

56. Rules of succession for a daughter's sons to the estate of their grandfather.—2 W. R. 277.

HINDOO LAW (INHERITANCE & SUCCESSION) (*continued*).

57. Uterine and half brothers succeed equally to property undivided and immoveable. Where no brothers are living the nephews of the whole blood have a preferential right to succeed over those of the half blood.—3 W. R. 43, 6 W. R. 93, 23 W. R. 272. (*Over-ruled as to half brothers*) *See* 23 W. R. 395 and F. B. ruling 114 *post*.

58. Conversion does not involve forfeiture of inheritance.—*See* Marriage 15.

59. According to the Mitacshara, a maternal uncle or a father's maternal uncle cannot inherit.—4 W. R. 13. (*Over-ruled by P. C.*) *see* 73 *post*.

60. A brother's son's daughters are not heirs according to Hindoo law.—5 W. R. 131.

61. Where re-union has taken place among certain members of a Hindoo family after partition, the members of the re-united family and their descendants succeed to each other to the exclusion of the unassociated or not re-united branch.—5 W. R. 249. 7 W. R. 35. *See* 77 *post*.

In what cases the above rule applies.—15 W. R. 412.

There is no distinction between brothers who have never separated and brothers who have re-united after separation, in respect of the succession to the property of a deceased brother.—21 W. R. 30.

62. Under the Mitacshara, a Hindoo may die possessed of a share in joint family property and also of separately acquired property, the succession to which will not necessarily devolve on the same heir. -6 W. R. 101.

63. According to the Bengal law, in default of son, grandson, great-grandson, or widow, the unmarried daughter succeeds in preference to the married daughters, and should she subsequently marry and die leaving male issue, her son will succeed to the exclusion of the married sisters and their male issue.—6 W. R. 147.

64. Under the Mitacshara, a brother's grandson can succeed.—6 W. R. 158, 14 W. R. 208.

65. According to the Mitacshara, a maiden daughter does not succeed in preference to her paternal uncle.—6 W. R. 197.

66. According to Hindoo law, the right of inheritance is not suspended by pregnancy or until adoption.—6 W. R. 221.

67. The Jains are governed by the — applicable in that part of the country in which the property is situate.—8 W. R. 116. *See* 22 W. R. 496.

68. Grandsons in the female line do not include sisters' sons.—8 W. R. 211.

69. A plaintiff suing on inheritance for money of lands whose rents he has not enjoyed, must prove his title, and either lineal descent or such contiguity of relation as entitles him to part succession. A descendant of the brother of the original acquirer, and not less than six generations off, cannot, under Hindoo law, share the property.—8 W. R. 258.

70. Where two brothers succeed to equal shares of a paternal estate, the absence of one does not deprive him of his rights of inheritance, unless the possession by the other is adverse to the absent brother.—9 W. R. 98.

71. In default of brothers, brothers' sons succeed, taking according to numbers, and not by representation as grandsons.—9 W. R. 463.

Per capita and not *per stirpes*.—18 W. R. 32.

72. According to the Mitacshara a sister's son can inherit the real property of his maternal uncle.—(F. B.) 10 W. R. F. B. 76. *See also* 18 W. R. 331.

73. The list of Bundhoos given in Article I s. 6 chap. 2 of the Mitacshara is not exhaustive but simply illustrative of the proposition that there are three classes of Bundhoos. Therefore a person's father's maternal uncle is a Bundhoo, and as such entitled to inherit in preference to the king, who cannot take to the prejudice of a maternal uncle or a maternal granduncle.—(P. C.) 10 W. R., P. C., 31. *See also* 18 W. R. 331.

74. The son of a deaf and dumb man born after the death of the former's grandfather, cannot inherit.—11 W. R., O. J., 19 (*foot-note*).

75. In like manner the subsequently born son of a man born blind cannot inherit, though such son would have inherited if he had been born before his grandfather's death.—(F. B.) 11 W. R., O. J., 11.

76. Where a father separates from his sons, an after-born son alone inherits the share which his father took on partition, as well as any wealth acquired by the father; and even as regards the share taken by the father on partition, neither the after-born son nor a son who was born blind, and whose disqualification has been removed subsequent to the partition, takes anything if the father should alienate his own share during his lifetime.—(F. B.) *Ib.*

77. Under the Hindoo law, a united brother takes in preference to the separated brother.—11 W. R. 308. *See* 61 *ante*.

78. Under the Mitacshara, the gentiles must be exhausted before the cognates can succeed.—11 W. R. 500. *See* 14 W. R. 118.

79. Where a party alleged to be disqualified from inheriting by leprosy volunteers to state that he has performed the penance required by the Shastras, he thereby admits that the leprosy demanded expiation and must prove the expiation to have been made.—11 W. R. 535.

80. The great-grandson of a deceased proprietor's maternal great-grandfather is a *sapinda* of such proprietor and equally with him entitled to offer undivided oblations to their common ancestor (the great-grandfather), and, as such, inherits the estate.—12 W. R. 339.

81. Under the Mitacshara, a daughter can take a separated share, but has no right as heiress where the property is held jointly. In the latter case, it is a rule of the Mitacshara law that the widow or daughter does not succeed, but is only entitled to maintenance.—12 W. R. 453. *See also* 17 W. R. 129, 21 W. R. 474.

82. In the Soodra caste, illegitimate children may inherit and have a right to maintenance.—(P. C.) 12 W. R., P. C., 41; 23 W. R. 334. *See* 8 *ante*.

83. The mere impartibility of an estate is not sufficient to make the succession to it follow the succession of separate estates.—(P. C.) 13 W. R., P. C., 21. *See* (P. C.) 24 W. R. 255.

84. Under the Mitacshara law, a great-great-great grandson of a common ancestor is not too remote in degree to be heritable as a gentile.—(P. C.) 14 W. R., P. C., 1. *See also* (P. C.) 23 W. R. 409.

85. S. 5 chap. 2 of the Mitacshara was not intended to be an exhaustive enumeration of the gentiles, but only a statement of the order in which they would inherit, and does not therefore limit the inheritance to the grandsons of the paternal grandfather and paternal great-grandfather.—14 W. R. 118.

86. A half-sister by the mother is entitled to succeed only when the deceased has left no children.—14 W. R. 356.

87. Under the Mitacshara, a nephew (brother's son) succeeds, not as the heir of his father, but as the direct heir of his uncle.—15 W. R. 70.

88. A Hindoo, by becoming a *byragee*, does not divest himself of all title in his family estate, which on his death devolves on his heirs, and not on a kept mistress, although she may have performed his funeral rites on account of his being an outcaste. - 15 W. R. 197.

89. Amongst sapindas, the nearest sapinda excludes those more remote.—15 W. R. 482.

90. There is no one rule of Hindoo law regulating the descent of all Hindoo Rajahs and their estates; but, in every case in which a departure from the ordinary — is relied on, a particular custom or *kolachar* must be proved.—16 W. R. 142. *See* 20 W. R. 154, (P. C.) 23 W. R. 412.

91. A daughter becomes entitled to her share upon the death of her father and not after her mother's death.—16 W. R. 276.

92. Upon the authority of decided cases as well as the evidence of custom in the family, it was held that the Raj or zemindaree of Ramghur being an ancestral impartible estate, and the family an undivided family governed by the Mitacshara, the plaintiff as eldest male heir was entitled to succeed to the dignity and estates of the family in preference to the mother of the late infant Rajah and widow of his father the last actual Rajah.—15 W. R. 375, 17 W. R. 316.

93. Apart from special custom, where there are sons by different wives, priority of birth, and not of marriage, must determine the succession of an impartible inheritance.—(P. C.) 17 W. R. 552.

94. Special usages modifying the ordinary law of succession must be ancient and invariable and established by clear and unambiguous evidence.—(P. C.) *Ib.*

95. The wife of a Hindoo who predeceased his father without male issue, is entitled, as his widow and heiress, to succeed to his separate estate.—(P. C.) 18 W. R. 69.

HINDOO LAW (INHERITANCE & SUCCESSION) (*continued*).

96. Even if the son survived his father, but died subsequently and before a partition, his share, according to the Mithila law, would pass to his brothers to the exclusion of his widow, who would be entitled only to maintenance. —(P. C.) *Ib.*

97. According to Hindoo law a party need not be incurably insane in order to be incapable of inheriting, nor is it necessary to show, by clear and positive evidence, the absolute impossibility of a cure.—(O. J.) 18 W. R. 305.

98. A madman, though excluded from inheritance, is entitled to maintenance.—(O. J.) *Ib.*

99. The distinction adopted by the law of England, as to the course of inheritance, between inheritable freeholds and personalty, is not known in Hindoo law.—(P. C.) 18 W. R. 359.

100. A gift *inter vivos* or by will cannot prevail against the —.—(P. C.) *Ib.*

101. All estates of inheritance created by gift or will, so far as they are inconsistent with the —, are void as such, and no person can succeed thereunder as heir to the estates described in terms which in English law would designate estates-tail.—(P. C.) *Ib.*

102. Whatever may be the state of the authorities in Bombay, there is no doubt in Bengal that, where the daughter takes her father's property on the death of the widow in default of a son, she takes the inheritance with a qualified power as regards alienation, in respect of which she is in no better situation than the widow. On the death of such daughter, her father's heir and not her heir succeeds. —20 W. R. 102. *See* 22 W. R. 54.

So held under the Mitacshara law also.—(O. J.) 22 W. R. 496, (P. C.) 24 W. R. 255.

103. Joint and separate property distinguished under the Mitacshara law, and the rule of succession or descent indicated.—20 W. R. 189, 197. *See also* (P. C.) 24 W. R. 255.

104. Accepting the High Court's finding that plaintiff had established his legitimacy, the estate, which was admitted to be ancestral and presumed to be joint, was held by the Privy Council, in the absence of a special family custom, to descend to him and his brother in equal moieties. Whether plaintiff could be entitled to more would depend on the general law of succession to be applied.—(P. C.) 21 W. R. 89.

105. Under the Mitacshara as well as under the law of the Bengal school, the unmarried daughter takes the whole of the property in preference to her married sisters; but under the Mitacshara she only takes in priority to them and not to the ultimate exclusion of their right to inherit from their father. On her death, it goes, according to the ordinary rules, to the next surviving heir of the next full taker of the property.—22 W. R. 54.

106. According to the general principles of Hindoo law, a sister's son is a preferential heir to a mother's sister's son.—22 W. R. 264.

107. The succession of females (widows and daughters) to — is not regular succession and is not based upon the ordinary theory of spiritual benefit, so that, if they relinquish their rights in favor of the reversioner, the case is brought back to the normal state of succession, the effect being to vest in him a complete title.—22 W. R. 393.

108. The Hindoo law current in Bengal excludes from inheritance persons born blind and deaf, not those who have become so afterwards from some adventitious cause. —23 W. R. 78.

109. According to Hindoo law, the right once vested in a daughter by inheritance does not cease until her death, notwithstanding she has become barren or a widow who has not borne a son. Circumstances of that nature do not destroy a heritable right which has once vested.—(P. C.) 23 W. R. 214.

110. Where two daughters succeeded by inheritance to their father's estate, and one of them died leaving her sister, who had then become a childless widow, the property survived to her sister; because, like widows, the two daughters collectively were one heir to their father, and the disqualification of the survivor to inherit at that time did not destroy the right of survivorship which she had previously acquired by inheritance.—(P. C.) *Ib.*

111. A *bundhoo* or cognate only cannot inherit as long as there is a *sapinda* or *somanadoka* in existence.—(P. C.) 23 W. R. 409.

112. Even supposing the old rule of Hindoo law still to exist, viz. that a daughter may be specially appointed to raise a son and that the son of a daughter so appointed is entitled to succeed in preference to more distant male relatives, inasmuch as the rule breaks in upon the general rules of succession, whenever an heir claims to succeed by virtue of that rule, he must bring himself very clearly within it.—(P. C.) *Ib.*

113. The right of inheritance of a brother's son's daughter's son is inferior to that of a brother's son's son's son.—24 W. R. 229.

114. In Bengal the brother of the whole blood succeeds in the case of an undivided estate, in preference to a brother of the half blood.—(F. B.) 24 W. R. 234.

115. Where ancestral property has been held according to the rule of primogeniture, and the family is governed by the Mitacshara law, that law, in the event of a holder dying without male issue, would, if the family were undivided, give the succession to the next collateral male heir in preference of the widow or daughters of the last possessor. —(P. C.) 24 W. R. 255.

116. Though a family might be undivided, the separate property of any member would go according to the law of succession to separate estate. Whether the general *status* be joint or undivided, property which is joint will follow one, and property which is separate will follow another, course of succession.—(P. C.) *Ib.*

See Adhikaree 2.
Attgurh Raj.
Certificate 38, 66, 117.
Construction 29, 152.
Declaratory Decree 5, 7.
Disinherison.
Endowment 16.
Evidence (Documentary) 37.
" (Estoppel) 57, 114.
Exclusion from Inheritance.
Family Custom 1, 3, 5, 6, 7.
Forfeiture 22.
Ghatwals 5.
Gift 5.
Hindoo Law 5.
" " (Adoption) 1, 4, 17, 27, 30, 38, 42, 44, 46.
" " (Alienation) 21.
" " (Coparcenary) 17, 31, 38, 39, 44, 51, 67, 102.
" " (Migration) 1, 3.
" Widow 22, 28, 32, 51, 53, 54, 56, 58, 65, 71, 78, 79, 85, 98.
Hosaipore Raj.
Judgment 13.
Jurisdiction 30.
Keonghur Raj.
Limitation 3*a*, 50, 62.
" (Reg. III of 1793 s. 14) 1.
Marriage 1, 15, 23.
Maxims 1.
Onus Probandi 57, 91, 92, 101, 238, 240, 252.
Pachoot.
Ramnuggur.
Rawutpore.
Relinquishment 18, 19.
Reversioner.
Shoosung Estate.
Streedhun 1, 3, 4, 6, 7, 8, 9, 10, 12, 13.
Succession 1.
Will 18, 58.

Hindoo Law (Migration).

1. A Hindoo migrating from one province to another, and acquiring property in the territory where he settles,

HINDOO LAW (MIGRATION) (*continued*).

must be presumed, until the contrary be proved, to carry with him and retain all his religious ceremonies and customs, and consequently his law of succession; especially when the family is shown to have brought with it its own priests, who, and their descendants after them, continue their ministrations down to the period of contest.—W. R. F. B. 67. (1 Hay 534, Marshall 232). *See* 13 W. R. 47.

2. Where a family originally migrated from the Mithila province to the province of Bengal, the presumption is that they have preserved the religious rights and customs prescribed by the Mitacshara law, unless the contrary be proved.—W. R. F. B. 75 (2 Hay 232).

3. The presumption is that Hindoo families migrating retain their rites, customs, and laws of succession, until the contrary is proved.—W. R. Sp. 95.

4. How the presumption may be rebutted that a family migrating into Bengal from the North-West imports its own customs and laws.—6 W. R. 295.

5. The prevalence in any part of India of a special course of descent in a family differing from the ordinary course of descent in that place of that class or race, stands on the footing of usage or custom of the family; and the custom is capable of attaching and of being destroyed equally whether the property be ancestral or self-acquired. The adoption by a family that came into Bengal from a distant part of India where the Mitacshara prevails, of the law of Bengal for some generations, is consistent with a discontinuance of a former usage.—(P. C.) 10 W. R., P.C., 35. *See* 13 W. R. 47.

Hindoo Law (Religious Ceremonies).

1. An action is not maintainable by a Purohit against another Purohit for interfering with an alleged exclusive right of performing religious ceremonies at a particular place, there being no legal obligation upon the Jujmans to abstain from employing another. - 1 Hay 365 (Marshall 161). *See* 10 W. R. 114.

2. A suit will lie by one priest against another for a share of offerings actually received by the latter, if there be any contract to pay over such share.—W. R. Sp. 146.

3. Privilege of administering Purohitam to pilgrims resorting to Ramaswaram.—(P. C.) 2 W. R., P. C., 21 (P. C. R. 492). *See* 11 W. R. 457.

4. A voluntary offering to any one does not give another a right of action against the recipient. - 2 W. R. 69.

5. A suit will lie for the collections of a shrine, either in right of property in the place, or of lawful and established office attached to it.—3 W. R. 33.

6. A suit can be brought by the widow of one of the members, for her share of the fees obtained by the joint members of a family as Purohits.—5 W. R. 222. *See also* 10 W. R. 114, 15 W. R. 531.

7. A suit will not lie by the assignee of a Sebait to enforce payment of *murjada* (respect money) alleged to be a customary payment by persons of the Kassary caste having marriage ceremonies or *shrads* in their houses.—5 W. R. 224.

8. According to Hindoo law, a mother's *shrad* is not, like the father's, a legal necessity to justify a sale by a daughter to the prejudice of the daughter's son. - 7 W. R. 146. (*But see the next following case.*)

9. According to Hindoo law the raising of funds by a Hindoo widow for the performance of her deceased husband's mother's *shrad* is a legal necessity justifying a sale of the husband's estate.—10 W. R. 309.

10. No suit will lie to recover damages based upon such uncertain and merely voluntary payments as offerings to idols.—10 W. R. 457.

11. Where a compromise gave the elder of two brothers certain lands and rents coupled with the performance of a trust of a nature constantly vested in the managing or elder brother of a joint Hindoo family, and the younger brother sued the elder brother for damages alleged to have been sustained in the performance by the younger brother at his own cost of religious ceremonies which the elder brother had undertaken under the compromise but had not performed,—*Held* that, in order to prove his cause of action, it was necessary for the younger brother to show that the non-performance of the trust was not owing to any default on his part.—(P. C.) 11 W. R., P. C., 31.

12. A party seeking to establish his right to share in the ministrations of officiating priests, is entitled to bring a civil suit to have his rights ascertained and declared, if based partly on kobalas which are contested and partly on the right to succession.—15 W. R. 531.

13. The owner of an idol is entitled to appoint any one he likes to perform his *poojah*; the mere fact of a party and his ancestors having done so for a long period creates no right in his favor.—16 W. R. 99.

14. A *birth moha Brahminee*, or right to officiate at funeral ceremonies, is incapable of transfer.—16 W. R. 171.

15. A suit for a declaration of a right to receive marks of respect at the hands of the Purohit at idol-festivals, and to obtain damages from the priests for withholding the same, is not cognizable by a Civil Court.—16 W. R. 198.

16. *Quære.* Whether, according to Hindoo law, a woman can succeed to the office of priest.—16 W. R. 282.

17. The phrase "jujmanee right" was construed to mean the right to participate in the offerings made to the idol, and not the offerings or presents which were made to the priest himself.—20 W. R. 331.

See Adhikaree.
Certificate 108.
Contribution 8.
Declaratory Decree 17, 37, 38.
Endowment 22, 24, 26, 30, 31, 34, 41, 45.
Gift 7, 27.
Hindoo Law (Adoption) 9, 12, 51, 52, 60.
,, ,, (Alienation) 11.
,, ,, (Inheritance and Succession) 79, 88.
,, ,, (Migration) 1, 2, 3.
,, Widow 99.
Jurisdiction 123, 124.
Limitation (Act XIV of 1859) 279.
Manager 5.
Marriage 38.
Mesne Profits 10.
Partition 28.
Res Judicata 30.

Hindoo Law (Sale).

1. Under the Mithila law, sales made by order of Court in execution of a decree for an ancestral debt, can only be set aside when the debt was contracted for an *immoral purpose*. Proof of mere extravagance will not enable the son to succeed. The *onus* of proving the immorality is on the son.—W. R. Sp. 310 (L. R. 90).

2. According to the Mitacshara, a father is not incompetent to sell immoveable property acquired by himself. --Sev. 472; 6 W. R. 71, 74. *See* 10 W. R. 287.

3. According to the Mitacshara, landed property acquired by a grandfather, and distributed by him amongst his sons, does not, by such gift, become the self-acquired property of the sons so as to enable them to dispose of it, by gift or sale, without the consent and to the prejudice of the grandsons. But the sale by a father of ancestral immoveable property, without the concurrence of his son, is not necessarily void, but only voidable unless the purchaser can show that it was made during a season of distress for the sake of the family or for pious purposes.—Sev. 472.

4. Property inherited from another and a distant branch of the family cannot be sold for a father's debts.—3 W. R. 137.

5. In a suit by younger brothers in a joint Hindoo family to set aside a sale made without legal necessity by their elder brothers as trustees, where defendant's sole plea of self-acquisition on the part of their vendors is set aside, plaintiffs are entitled to possession if their contention is proved.—5 W. R. 197.

6. A near relative who purchases joint family property and sets up a plea of self-acquisition on the part of his vendor, which plea he cannot substantiate, cannot be considered a *bonâ fide* purchaser.—*Ib.*

7. Under the Mithila law, a sale made by an adult mem-

HINDOO LAW (SALE) (*continued*).

ber of a joint Hindoo family is void for want of consent of all the heirs, and where there is no proof that the sale was made without legal necessity or for the benefit of the minors.—5 W. R. 221.

8. In a suit by a son under the Mithila law to set aside sales by his father, the purchasers were held not bound to show an absolute necessity for the sales, it being sufficient if they have acted *bonâ fide* and with due caution and were reasonably satisfied, at the time of their respective purchases, of the necessity of the sales in order to meet debts which the father had a right to discharge; the *onus probandi* in such cases varying according to the circumstances.—6 W. R. 149.

9. In the absence of authority in the eldest brother from his brothers to sell their rights, the sale by the eldest brother is not the act of all the brothers.—7 W. R. 238.

10. Where joint family property is sold to redeem other mortgaged property about to be foreclosed, the transaction, being for the benefit of the family, is good; and where a large sum is due on mortgage, the purchaser need not enquire into original necessity for mortgage. The rule that only so much joint property should be sold as will meet the necessity, does not apply where the excess is small and the required money cannot otherwise be raised.—8 W. R. 75. *See* 10 W. R. 57.

11. In a case governed by the Mithila law, the existence of a decree against the father was held to be not sufficient evidence of the necessity for his selling his son's interests in ancestral property.—9 W. R. 469.

12. The mere fact that sales of ancestral property took place in execution of decrees against the ancestor does not of itself show that the sales were for necessary or justifiable purposes.—10 W. R. 57.

13. A deed of sale by a member of a Hindoo family acting *de facto* as guardian of minor brothers, is not invalid by reason of the father being alive.—10 W. R. 106.

14. Where the guardian sells part of an estate, using the money in a suit for the benefit of the whole property, the sale is valid.—*Ib.*

15. Under the Mitacshara law, a single member of a family may sell immoveable property to pay off family debts, only where the sons and grandsons are minors or otherwise incapable of giving their consent.—13 W. R. 30.

16. Where a sale of landed estate by a single member for the payment of family debts is set aside because made without the son's consent, the son can only get possession on payment of his share of the purchase-money which was applied to the liquidation of the debts.—*Ib.*

17. In a suit to set aside a sale of ancestral property by a minor's father as made without necessity and without enquiry, defendants pleaded pressure of a foreclosures suit on account of a demand under a former mortgage for an ancestral debt. Plaintiff having failed to establish his case, was not allowed to go back and open the consideration for the mortgage made so long as twenty-two years ago.—(P. C.) 17 W. R. 106.

See Ancestral Property 7, 8, 11, 12, 14.
Evidence (Presumptions) 10.
Hindoo Law (Alienation) 10, 11, 19.
„ „ (Coparcenary) 28.
„ „ (Inheritance and Succession) 29.
„ „ (Religious Ceremonies) 8, 9.
Minor 22.
Onus Probandi 164, 167, 276.

Hindoo Widow.

1. Conveyance by — and rights of reversioner.—(F. B.) W. R. F. B. 165 (L. R. 4). *See also* 1 Hay 339 (Marshall 113); L. R. 141; Sev. 60-1; Sev. 136 *pp.*; Sev. 230; 3 W. R. 105, 183; 5 W. R. 131; 6 W. R. 222, 303; 7 W. R. 167, 335; 8 W. R. 273, 319; (F. B.) 9 W. R. 505; 10 W. R. 276; 11 W. R. 514; 12 W. R., P. C., 47; 14 W. R. 322; 16 W. R. 52; 17 W. R. 11; (P. C.) 22 W. R. 409; 24 W. R. 86, (P. C.) 306.

2. Reversioner cannot sue for damages until death of —.—S. C. C. 26.

3. A sale by a — of property in which she had merely a life-interest was annulled, no necessity for such a sale having been shown. Before a decree for immediate possession can be given in such cases to the plaintiffs, it must be clearly proved that the property has deteriorated owing to the sale, or is wasted by the purchasers.—1 Hay 107.

4. During the life of a childless —, a lease granted by her is good.—1 Hay 372 (Marshall 166).

5. In a suit for the recovery of a share of joint property, the plaintiff's maternal aunts, childless Hindoo widows, who were entitled to a prior life-interest to which the plaintiff's reversion was subject, filed a petition disclaiming their interest and assenting to the suit. *Held* that the Judge might make a decree founded upon the disclaimers of the widows.—1 Hay 513 (Marshall 241). *See also* 8 W. R. 500.

6. An *istifa* (or deed of surrender or relinquishment) given by a — having infant sons, cannot operate to destroy the title of the infants.—1 Hay 553.

7. It is incumbent on a party who claims under a sale in execution of a decree for an ancestral debt passed against the widow in her representative character, and who received a conveyance specifying the rights of the widow only, to show clearly both that the debt was the debt of the ancestor, and that the creditor brought his suit against the widow as executor of the estate, and obtained a decree in such a form as to render the estate liable and not the widow only.—L. R. 52.

8. Where the debts of the ancestor were of small amount,—*Held* that there was no legal necessity in the — to convey away the property and title of the heirs in reversion.—L. R. 110.

9. The possibility of a minor married daughter of a — having a son, and of his becoming heir on the death of the —, was held too remote a contingency to entitle the daughter's husband to sue the — for alienation and waste.—Sev. 834.

10. The title of a — to her husband's property, though a restrictive one, is not in the nature of a trust.—(P. C.) Sev. 661*a*.

11. The widow of a brother in a divided Hindoo family governed by the Mitacshara law, cannot alienate her interest in her husband's separate estate to the prejudice of reversionary heirs, except under legal necessity.—W. R. Sp. 101.

12. Where a plaintiff sues to set aside a sale by a — on the ground that there was no necessity to sell, and the Judge finds against him on that point, the suit necessarily fails, and the Judge need not enquire whether there was necessity to raise money for religious purposes.—W. R. Sp. 140.

13. The consent of all the reversioners is necessary to make a sale by a childless — valid in law, none but immediate reversioners being entitled to impeach the sale. But the purchaser is entitled to hold the property during the lifetime of the —.—W. R. Sp. 148.

14. A purchaser from a — of a portion of her husband's estate is bound to use due diligence in ascertaining that there is legal necessity for the loan, and must prove the circumstances of his loan.—W. R. Sp. 153.

15. A — has a right to kind treatment and maintenance from her father-in-law.—W. R. Sp. 177. *See* 9 W. R. 413, 10 W. R. F. B. 89.

16. In a suit by a reversioner to set aside a sale by a —, the Court cannot give possession to the reversioner, but can only declare the sale to be invalid.—W. R. Sp. 250.

17. A conditional sale is an alienation, the validity of which a reversioner to a — is, under the Hindoo law, entitled to question.—W. R. Sp. 263 (L. R. 42).

18. In a suit for mutation of names by a purchaser from a —, the purchaser must prove the legality of his purchase if he chooses to bring an action against the reversioner.—*Ib.*

19. The consent of all the heirs living at the time is necessary to make a conveyance by a — binding against the reversioners.—W. R. Sp. 268 (L. R. 50). *See also* 12 W. R., P. C., 47; 25 W. R. 50.

20. If an estate is sold, upon which a — has a claim to maintenance, she can sue to make her claim a charge upon the property sold.—W. R. Sp. 310, (L. R. 90,) 15 W. R. 263, 25 W. R. 100. *See also* 104 *post.*

21. A purchaser at a sale in execution of the rights and

HINDOO WIDOW (*continued*).

interests of a — is entitled to question the validity of leases made by the —.—W. R. Sp. 351 (L. R. 127).

22. A childless — in possession of a small property belonging to her father's estate, and without other source of maintenance, though not entitled to inherit, cannot be ejected by a stranger without title.—W. R. Sp. 379 (L. R. 153).

23. In a sale by a — under necessity, where purchaser pays a fair price and acts *bonâ fide*, the mere fact of only two-thirds of the purchase-money being paid to creditors does not invalidate his conveyance, as he is not bound to see to the application of the purchase-money.—W. R. Sp. 385.

24. A childless — Ranee cannot by deed of gift alienate her deceased husband's property as against his collateral heirs.—(P. C.) 5 W. R., P. C., 131 (P. C. R. 96).

25. A — is entitled by law to a life-estate in her husband's property.—(P. C.) 6 W. R., P. C., 1 (P. C. R. 98).

26. Although the exercise of an act of adoption by the widow of a Hindoo who died without male issue, and made in accordance with his request, diverted the property from the widow and vested it in the adopted son, the widow sued for an undivided share in the joint property, and a decree was made directing her to be put in possession,—*Held* that the widow must be assumed to have prosecuted the suit only as guardian for her adopted son; that the decree must be considered to be for his benefit; and that she was put in possession as trustee for him, and accountable to him as guardian and trustee for the profits of the property, being entitled herself to a maintenance out of it.—(P. C.) 6 W. R., P. C., 43 (P. C. R. 147). *See* 11 W. R. 468.

27. According to the Hindoo law, a — cannot claim an undivided property.—(P. C.) 7 W. R., P. C., 35 (P. C. R. 172).

28. Powers of a — taking her husband's estate by inheritance, and alienations by her.—(P. C.) 2 W. R., P. C., 61 (P. C. R. 476).

29. Right of the Crown to impeach alienations by —.—(P. C.) *Ib.* *See also* (P. C.) 25 W. R. 239.

30. The *onus* is on those who claim under an alienation from a — to show that the transaction was within her limited powers.—(P. C.) *Ib.*

31. A decree properly obtained against a — is binding on the succeeding heirs.—(P. C.) 2 W. R., P. C., 31 (P. C. R. 520). *See* 9 W. R. 505, 12 W. R. F. B. 14, 17 W. R. 421.

32. The course of succession, according to the Hindoo law of the south of India, of a zemindaree the self-acquired property of the grantee, is that, upon the death of the grantee without male issue, his widow inherits; but in the case of property of which part is the common property of a joint Hindoo family, and part the separate acquisition of a deceased brother, his widow (in default of male issue) succeeds to his separate estate, as to which the other members of the family have, according to the law of partition, no right by survivorship.—(P. C.) *Ib.* *But see* (as to districts governed by the Mitacshara) 17 W. R. 102, 20 W. R. 197.

33. A conveyance by a —, without proof of necessity to justify an alienation of ancestral property, can only operate as a conveyance of her life-interest.—1 W. R. 47, 16 W. R. 49.

34. A — cannot endow an idol with her husband's property or a portion thereof, to the detriment of the reversioners.—1 W. R. 48.

35. A mere declaration of necessity is not sufficient to justify a purchase from a —. The purchaser, though not bound to see to the application of the purchase-money, should satisfy himself of the existence of a legal necessity.—1 W. R. 59. *See also* 12 W. R., P. C., 47.

36. A defendant, being in possession under an alleged gift from a —, is not debarred from putting the plaintiff, who claims as purchaser from the widow, to the proof of his title, as well as its validity. On the other hand, the plaintiff, though failing to prove the validity of his purchase, may still be entitled to remain in possession during the widow's lifetime, on proof of his purchase being preferable to the defendant's alleged gift.—1 W. R. 69.

37. Alienation by childless — when alone valid.—1 W. R. 107.

38. A — cannot be compelled, without proof of waste, to give security for the value received by her of lands belonging to her husband's estate taken by a Railway Company.—1 W. R. 125.

39. A — can sue her co-sharers for her share of the sale-proceeds as the value of her life-interest in her husband's real estate.—1 W. R. 213.

40. A — cannot object to a sale (ten years after it took place) of land which the purchaser has improved by building a house thereon and otherwise.—*Ib.*

41. Necessity of sale by — to be proved by those who stand upon the conveyance.—1 W. R. 247, 347.

42. A pilgrimage to Benares is not a legal necessity to justify a sale by a —.—1 W. R. 252.

43. A — does not incur the penalty of absolute forfeiture by an attempt at a false adoption of a son.—1 W. R. 256.

44. The management of a — can only be interfered with on proof of acts of waste or fraudulent alienation of the property.—*Ib.* *See also* 24 W. R. 86.

45. A — is liable for her husband's debt, but may set off such debt against any debt due to her.—1 W. R., Mis., 23. *See also* 4 W. R. 38.

46. A — cannot sue as representative of her husband while sons (whether adopted or otherwise) are alive.—2 W. R. 49, 7 W. R. 455.

47. Effect of disclaimer by sons, in the absence of proof of the — being the next reversioner after the sons.—*Ib.*

48. According to Hindoo law, a son's widow is entitled to maintenance so long as she leads a chaste life, whether she elects to live with her father-in-law or with her own relations. -2 W. R. 134. *But see* 57 *post* (*Over-ruled*) *See* 9 W. R. 413, 10 W. R. F. B. 89, (*but affirmed by P. C.*) *See* 110 *post.*

49. The mere admission by a — of a debt of the husband as the cause of the sale of the property is not (in the face of a recorded protest by the reversioners) evidence that the debt really was the husband's. It lies on the purchasers to prove that it is so.—2 W. R. 170.

50. Claim of — to her husband's share of joint property inherited from his grandfather valid under what circumstances.—2 W. R. 179.

51. The doctrine of the Hindoo law, that a widow, succeeding as heir to her husband, cannot recover property of which he was not possessed, is inapplicable when the husband has a vested interest under a will or deed, the actual enjoyment being postponed.—2 W. R. 321.

52. Family jewels, if part of the ancestral property, are not transferable by a — except for special purposes.—2 W. R., Mis., 13.

53. A by his will appointed a guardian to his son and widow, and directed that the son should not take the management of the property before his 20th year, and that, in the event of his death, the guardian should see that the widow adopted a son without delay. The guardian having died or declined to act,—*Held* that, on the death of her son, the widow was entitled to succeed as his heir; the provision to adopt not being imperative.—2 W. R., Mis., 25.

54. According to the Mitacshara, a — has no part in her husband's joint estate.—3 W. R. 210.

55. It is not necessary that a — should be maintained in the same state as her husband would maintain her.—4 W. R. 65.

56. A childless — and nearest heir of her deceased husband has, under the Mitacshara, an absolute right over all the moveable property left by him, and can alienate it to whomever she pleases.—5 W. R. 141.

57. The obligation of a Hindoo to maintain his daughter-in-law (son's widow) depends on his ability to do so.—5 W. R. 225. *But see* 9 W. R. 413, 10 W. R. F. B. 89.

58. According to the Dayabhaga, a — is the heiress of her deceased husband in preference to his brother.—6 W. R. 61. *See* 98 *post.*

59. Where a — relinquished her right to her husband's share of ancestral property to his brothers, in consideration of receiving a maintenance from them, and the share of one of them is subsequently sold, she cannot claim to have the property so sold charged with her annuity.—6 W. R. 198.

Where however persons, presumptively the next in succession to a —, came to an arrangement by which she surrendered possession to them and received a maintenance from them, such arrangement was held to be binding as a family arrangement and not altered by the death of one of the reversioners during the lifetime of the —.—22 W. R. 307.

HINDOO WIDOW (*continued*).

60. On what principle maintenance for a — should be awarded.—6 W. R. 285.

60a. Where only the rights and interests of a — in the property left by her husband were sold in execution of a decree against her on account of a debt contracted by her, and neither the decree nor the sale proceedings declared the property itself liable for the debt,—*Held* that the purchase conveyed an interest in the estate only during the widow's lifetime.—6 W. R. 303 (*affirmed by P. C.*) 24 W. R. 306.

61. A party who sues as decree-holder to set aside a sale by a — as fraudulent, cannot raise the question of necessity. —6 W. R. 305.

62. The mere fact of issue of a sale *istahar* about the time of an alienation by a — is not evidence of necessity. —6 W. R. 323.

63. Under the Mitacshara, a — has no rights beyond those of maintenance, where a valid adoption makes the adopted son the legal heir.—7 W. R. 450.

64. The existence of a debt, liquidation of which is provided for by lease of ancestral property, is no justification for alienation of such property by a — during her life-tenancy.—7 W. R. 450.

65. A —, as holder of a certificate under Act XXVII of 1860, is not necessarily the proper person to continue a suit for the recovery of immoveable property; though she is entitled to do so as heir of the deceased, if he died without issue and was the sole owner of the property.— 8 W. R. 2.

65a. In a suit brought by a third person, the object of which is to recover or to charge an estate of which a — is the proprietress, she will, as defendant, represent and protect the estate, as well in respect of her own as of the reversionary interest.—(P. C.) 8 W. R., P. C., 17. *See* 23 W. R. 174, (P. C.) 24 W. R. 306.

66. The sale by a — of a larger portion of her husband's estate than is necessary to raise an amount authorized by the law, is not absolutely void as against the reversioners, who can only set it aside by paying the amount she is entitled to raise with interest.—9 W. R. 107. *See also* 9 W. R. 284, 20 W. R. 187.

67. The sale by a — of a portion of her husband's estate, when it would be more beneficial to mortgage, cannot be set aside as against the purchaser, if both parties are acting *boná fide*.—*Ib.*

68. Where a decree is obtained against a — as guardian of her son as well as in her own right for a debt contracted jointly by her and her husband, the husband's property is liable to satisfy the whole decree; and the wife is therefore entitled to sell as much of the estate as is necessary to raise the full amount of the debt.—(F. B.) 9 W. R. 316.

69. When a — sells land in her possession on the alleged ground of necessity, and the then next heir attests the execution of the deed of purchase, such attestation is not conclusive in law as to the necessity, but is strong proof of the purchaser's good faith.—9 W. R. 350.

70. Where a considerable time has elapsed, of enjoyment and apparent acquiescence, a purchaser from a — need not show anything more than the fact of a sale made to him under some ostensible plea of necessity.—*Ib.*

71. Under the Mitacshara law, a childless — takes only a limited interest in her husband's estate, similar to that taken by a childless — according to the law of the Bengal school.—9 W. R. 490.

72. A — may make the fullest use of the usufruct of her husband's estate; but the portion of it she leaves behind at her death is not liable for her personal debts, unless incurred under legal necessity, or for the benefit of the estate. These accumulations cannot be considered her *streedhun*.—9 W. R. 584.

73. Where the assignee of a reversionary heir obtained a decree against the — for waste, and was appointed by the Court manager of the estate for the — but did not enter upon his duties until 6 years had elapsed, a pottah granted by her relative to the property was held good and valid against her and against the manager also.—9 W. R. 598.

74. A Hindoo banker dying intestate left two widows (D and M) as his co-heiresses. A document put forward by a third party (H) as a will of the deceased having been set aside by the Courts, an order was passed in a summary suit under Act XIX of 1841, by which the property was equally divided between the widows. One of them (D) subsequently died, leaving a will disposing of her share to her relatives. Steps were taken during D's life by the other widow (M) and by H to resist the registration of the will; and after D's death, M applied for the attachment of D's share and the application of a curator. Her application being dismissed, she commenced a regular suit. *Held* that M's original acquiescence in the title set up by H did not deprive her of any rights which accrued to her as one of the co-heirs of her husband when that claim was decided to be untenable, nor could her alleged alienation of her share bar her present suit.—9 W. R., P. C., 23.

75. *Held* also that the estate of two widows who take their husband's estate by inheritance is one estate of which they are coparceners. The acquiescence of the widows to a partition only binds each not to disturb the other's possession, but does not affect the right of survivorship.—*Ib.* *See also* (P. C.) 23 W. R. 214. *See* 14 W. R. 370.

76. Where waste is proved on the part of a —, the Court should not put a reversioner into possession, but should appoint a manager (who might be the reversioner) who should be required to render accounts periodically.— 10 W. R. 73.

77. Leases granted by a — cannot be interfered with, unless the lessees are making waste.—*Ib.*

78. According to the Mitacshara a — may dispose of moveable property inherited from her husband, a power she does not possess under the law of Bengal; but by both laws she is restricted from alienating any immoveable property, whether ancestral or acquired, so inherited. On her death the immoveable and the undisposed-of moveable property pass to the next heirs of her husband.—(P. C.) 10 W. R., P. C., 3.

79. Under the Mitacshara the widow of a Hindoo separate in estate from his brothers would succeed instead of the brother's sons, and the possession of the latter for more than 12 years is adverse possession barring her claim.— 11 W. R. 9.

80. A member of a joint Hindoo family living under the Mitacshara law, died entitled to an undivided share in such property and leaving two widows surviving him. After his death, his widows were sued in their representative capacity in respect of debts incurred by him in his lifetime on his own account and not for the benefit of the joint family, and decrees were obtained against the widows in that capacity. In execution of one or more of these decrees, an interest in certain portions of the joint family property to the extent of the share to which the deceased was entitled in his lifetime was sold by auction and the purchasers were put into possession. *Held* that the purchasers took only the rights and interests of the widows: that as the property did not belong to the widows or to the heirs of the survivors, it could not be made available under a decree against the widows in their representative character, but could be made liable only in a suit properly laid against the survivors.—(F. B.) 12 W. R. F. B. 1. *See* 12 W. R. 446. 14 W. R. 339, (P. C.) 25 W. R. 285.

81. Where a decree was obtained in a suit instituted on behalf of a — by G upon the agreement that G should retain half of all that was recovered for his absolute benefit and repay himself out of the other half all sums spent in prosecuting the suit, and in execution of the decree a large sum of money was paid into Court,—*Held* that a suit would lie by the reversioners to restrain waste and to prevent payment of the money out of Court to G; the contract being void as against the reversioners otherwise than as a security for sums properly paid and costs properly incurred by G with interest thereon, and being void if not upon the ground of champerty and maintenance, upon the ground that it was an unconscionable bargain and a speculative, if not gambling, contract.—12 W. R., O. J., 13.

82. According to Hindoo law, accumulations are not the same as income so as to be used by the — at her discretion; but should be treated in the same way as the *corpus*.—*Ib.* *See also* 25 W. R. 335 *and* Will 5.

83. A son has no right under the Hindoo law to turn his father's widow and the other females of the family who are entitled to maintenance, out of the family dwelling-house without providing a suitable residence for them elsewhere, nor can he give a purchaser the right to do so, the maxim of *factum valet* being applicable.—12 W. R., O. J., 35.

HINDOO WIDOW (*continued*).

84. A — has a right to let out portions of the family dwelling-house to monthly tenants for the purpose of maintaining herself or her infant child, and such tenants cannot be turned out on the son's coming of age without properly determining the monthly tenancies.—*Ib.*

85. *Quære.* Whether, under the Mitacsharā, the elder — inherits the whole estate, the younger — receiving maintenance from the estate; or whether the rights of the two widows are equal.—12 W. R. 158.

86. Where the elder — was allowed to enjoy possession of the whole estate during her lifetime, the younger receiving maintenance, the possession of the former was not adverse to the latter, and the latter's cause of action with reference to the moiety held by the former accrues only on the death of the former.—*Ib.*

87. Where the life-tenancy of a — was made over to N with the widow's consent to enure during her lifetime, N's possession was held to be not adverse to the reversioner.—12 W. R. 234, 13 W. R. 52.

88. Plaintiff cannot for the first time in a later action impugn a sale by a — on the ground of fraud, when no such ground was taken in the former suit.—12 W. R. 336.

89. Where a — under age is properly represented in a suit, the matter stands precisely as if she were of age, and she has the same control with respect to compromise as with respect to the assertion of rights and appeal.—12 W. R. 413.

90. Any act done by any decree given against a — as sole proprietor and not as guardian of her minor children, will not bind the minors.—13 W. R. 63.

91. Where the only question raised by the parties in a suit is whether an alleged sale by a — is valid as against the reversionary heirs, the Court should not go behind that question and enquire into the *factum* of the sale.—13 W. R. 172.

92. Mere unchastity on the part of a — does not divest her of property which has once become vested in her.—14 W. R., O. J., 23.

Affirmed by F. B. according to the Hindoo law administered in the Bengal school.—19 W. R. 367. *See* 12 W. R. 336.

Act XV of 1856 has no bearing on such a case as the above.—*Ib.*

93. A — in possession and the apparent next taker, by joining in one conveyance, can make a complete taker.—14 W. R. 379.

94. A — by putting in petitions in the course of legal proceedings disclaiming her right to property which had descended to her son and in which she then had no interest at all, cannot be prevented from setting up her real right as heir of her son when that right actually accrued, *i.e.* upon the death of her son.—(P. C.) 15 W. R. 16.

95. A — enjoying the immoveable property of her deceased husband, is not entitled to alienate the immoveable property or any property which she may have purchased out of the profits of such estate.—15 W. R. 63.

96. The possession in right of inheritance of a — having sons alive is not adverse to a reversioner.—15 W. R. 147.

97. A —, as holder of a certificate under Act XXVII of 1860, is entitled to obtain delivery of her husband's property on giving security to indemnify any claimant to the same property.—15 W. R. 302.

98. According to the Hindoo law in Bengal, a — is entitled to succeed to her husband's property and to have her name registered as proprietor.—16 W. R. 42.

99. The *shrad* of the husband, the marriage of his daughter, the maintenance of his grandson, and the payment of his debts are admitted by Hindoo law as legitimate grounds of necessity for alienations by a —.—16 W. R. 52.

But the alienation on account of the *shrad* must be only as to a moderate portion of the deceased husband's estate.—19 W. R. 426.

As to payment of debts and benefitting the estate generally.—(P. C.) 22 W. R. 409.

100. Where a — having only a life-interest in her husband's property, and being unable to carry on a litigation, sold a portion of her rights and interests, in the suit to G and J, and died soon after a joint decree was passed in their names, her rights and interests as well as those of G and J were held to cease with her death, and the judgment-debtor, as heir to her husband, became the sole judgment-creditor and entitled to the whole property.—17 W. R. 20.

101. The childless widows of the brother and nephew of a deceased person are not entitled under the Hindoo law to be considered as the legal representatives of the deceased.—17 W. R., 189.

102. A decree in a suit against a — in temporary possession for a debt arising out of her own neglect of duty, is not binding on all persons succeeding her. A sale made in execution of such a decree passes no more than the widow's personal interest.—17 W. R. 421.

103. When a — sues to have her right of maintenance declared, she should ask not that her right should be declared generally, but for enquiry as to the fit and proper sum for her maintenance; but acting upon the rule in Courts of Equity, if a plaintiff mistakes the relief to which he is entitled under his special prayer, the Court may afford him the relief to which he has a right under the prayer of general relief (provided such relief be consistent with the case made by the bill), and the Court ought not to dismiss the case but frame issues accordingly.—(O. J.) 17 W. R. 432.

104. As against an heir who has taken the property, the — has a right to have her maintenance treated as a charge against the property, and she may follow the property in the hands of any one who takes it with notice of her claim against the heir. But the widow's maintenance is not by the law in Bengal a charge on her husband's estate in the hands of an alienee without notice of her claim.—(O. J.) 17 W. R. 433 (*foot-note*). *See also* 20 W. R. 126, 25 W. R. 100, and 20 *ante*.

Before following properties from which a — is entitled to obtain her maintenance in the hands of the purchaser, she is not bound in all cases to attempt recovering her maintenance from the heir-at-law.—25 W. R. 100.

105. In a suit by the sons of the reversionary heir of a Hindoo ancestor to recover property sold by his widow 50 years ago to defendant's predecessors, the Court, considering the lapse of time, the adequacy of the consideration, the due registration, etc., of the deeds, the reversionary heir's knowledge of the alienations, his conduct up to the time of his death, and the delay in bringing the suit, held the defendants entitled to a strong presumption that their predecessors had purchased after due enquiry and after satisfying themselves of legal necessity.—18 W. R. 77.

106. A suit to recover principal and interest on a bond executed by a —, whilst possessed of her late husband's property, cannot be brought at her death against his reversionary heirs on the ground of some supposed equity arising out of the possession of the estate by the defendants obliging them to pay a portion of the money which was expended in recovering it.—18 W. R. 121.

107. The institution of a suit by a — may be beneficial to her as well as those who will succeed her, and yet not be a necessity.—*Ib.*

108. There is no necessity for a — to borrow money, when she has an income more than sufficient to pay the expenses of litigation.—*Ib.*

109. Where an estate which devolved to a — was sufficient to pay a small debt due by the husband, the Government revenue, and all other expenses including the marriage of daughters, the widow was held not justified by any legal necessity in alienating the estate.—19 W. R. 79.

110. A — does not lose her right to maintenance by reason of her leaving her husband's house, provided she does not leave for the purposes of unchastity or for any other improper purpose.—(P. C.) 20 W. R. 21.

111. A — is not trustee for the heirs, but has the whole of the inheritance in her with a limited power of alienation; her power of alienation for spiritual purposes being larger than that to which necessity gives rise.—20 W. R. 187.

112. On a partition being made of joint family property, a — is entitled to her share either by way of maintenance or as a portion of the inheritance.—20 W. R. 192.

113. The digging of a tank, though a meritorious act and a great convenience to the public, is not a legal necessity for which a — can alienate property left to her for life only.—21 W. R. 49.

114. Where property to the immediate possession of which a — is entitled, is conveyed away by parties having

Hindoo Widow (*continued*).

no right to it, the cause of action for a suit to recover possession is afforded thereby to the — and not to reversionary heirs.—21 W. R. 444.

115. *Quære*. Have not the reversionary heirs a right to ask for a declaratory decree to the effect that, as against ultimate heirs, the possession of the trespassers and others should be considered as the possession of the —.—*Ib.*

116. When the estate of a deceased Hindoo held jointly by his two widows survives, on the death of one of them, to the surviving widow alone, no cause of action can accrue to the reversioners until the death of the survivor, even in respect of a moiety of the property.—23 W. R. 125.

117. Where Hindoo widows acquire property by advancing money during an interval when they are out of possession of their deceased husband's estate, the money so advanced cannot be presumed to be a part of the proceeds of that estate.—*Ib.*

118. When a suit is brought against a — in respect of a debt due from her husband, the decree passed, although apparently against her personally, is not to be considered as such, but as a decree against her as the representative of her husband's estate, and may be executed as such. Where the debt has not accrued in the lifetime of the husband and is not his debt, the decree against her in a suit to which the reversioner is not a party, can only be considered as a personal decree, and be enforced by the sale of her interest only, except where the proceeding is one which authorizes the sale of the tenure under Act VIII of 1869 (B. C.).—23 W. R. 174.

119. A suit was brought by a — to recover her share, as heiress to her husband, in certain family property of which she claimed a portion in her absolute right, and a portion as one of the joint *sebaits* of certain idols. Among other properties plaintiff claimed one-fifth share in a talook, not as a *debuttur* property, but, in right of her husband, as her absolute property. The first Court found that this share was the property of a certain idol, and held that she had not maintained the allegation in her plaint, and even if entitled to it in her right of joint *sebait*, she could not recover in that capacity, as she had not proved her plaint in that way and had not sued as *sebait*. The Privy Council held the High Court to be right in treating this objection as one rather of form than of substance, and in giving the relief prayed for.—(P. C.) 23 W. R. 369.

120. Where a family settlement by a Hindoo gave his widow an estate for life with power to appropriate the profits, and his adopted son (what would be termed in the phraseology of English law) a vested remainder on her death, the document was construed in its plain ordinary meaning as giving the widow power to make whatever use she chose of the proceeds of the estate and as making whatever property she bought with such proceeds to be hers and to devolve on her representatives. — (P. C.) 24 W. R. 168.

121. A daughter without issue is not entitled, during the lifetime of the —, to sue for the recovery of a debt due to the estate of her deceased father, nor is she entitled to a declaratory decree.—24 W. R. 226.

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Will 3, 5, 13, 15, 20, 44, 49, 58.

Homestead.

See Enhancement 151.

Hooghly.

See Transferable Tenure 8.

Hookumnamah.

The mere issue of a — (to collect statistical information) by a Police Officer is no legal ground for a conviction of abetment of cheating or of extortion.—4 W. R., Cr., 5.

See Jumma Nuvees 1.

Hoondee.

1. A — payable to the depositor is only payable to the drawer or his indorsee. When the drawer and his brother are members of a joint Hindoo family, it may be presumed that the latter is entitled to act for the former.—W. R. Sp. 262 (L. R. 11).

2. A party who receives a — for a particular purpose must apply the same accordingly; and neither he nor any third party knowing the facts can, by afterwards receiving the amount, detain the same from the principal.—1 Hyde 155.

3. *Quære*. Whether a — made payable "to order" is, according to the Hindoo law and the custom of native merchants, negotiable without a written indorsement by the payee.—*Ib.*

4. Where a Bank was held guilty of such negligence with regard to a — as to render it liable for the amount thereof.—2 Hyde 57.

5. The omission by the holder to give notice of dis-

HOONDEE (*continued*).

honor discharges the drawer of a — from liability.—2 W. R. 214.

6. According to the usage of native bankers at Moorshedabad, interest is claimable on a — drawn at 111 days' sight.—4 W. R. 85.

7. An indorser of a — returned dishonored to him, may sue the drawer upon it, and may recover if he is the lawful holder of it.—5 W. R. 86.

8. Although the English law of prompt notice by return of post does not apply to hoondees drawn by natives upon natives and indorsed by natives, yet reasonable notice of dishonor is essential.—6 W. R. 301. *See also* 21 W. R. 62.

9. When, in liquidation of a loan of a sum of money, the borrower gives the lender two hoondees for a larger sum, taking back the balance with a discount, the only right of action left to the lender is on the hoondees themselves.—7 W. R. 154.

10. One who draws a — on his own factory, and delivers it to another, is not entitled to credit for the amount drawn.—7 W. R. 179.

11. A promise to pay indorsed upon a — after it had been dishonored, though not amounting to a waver of notice, was held to be good and sufficient evidence that the indorser had received notice that the bill had been dishonored.—13 W. R. 420.

12. The non-acceptance of a duplicate —, where the original has already been accepted, is no cause of action.—15 W. R. 501.

13. Where a duplicate — provides that it shall not be accepted if the original has been accepted, no custom can override the terms of the contract.—*Ib.*

14. Before acceptance at any rate, a — payable to *shajoog* would pass by delivery merely.—16 W. R., O. J., 10 (*foot-note*).

15. D K having dishonestly obtained possession of a — before acceptance, forged a special indorsement to himself, got it accepted in favor of himself, and then indorsed it to defendant. The Court declined to look behind the acceptance.—*Ib.*

16. In a suit for the recovery of a — or its value, the question was whether defendant, by reason of having purchased the — for valuable consideration without notice, acquired a good title to it, notwithstanding a forged special indorsement to his vendor before acceptance and a forged indorsement to himself after acceptance.—*Held* that, when a Hindoo maker or rightful owner of a — payable to *shajoog*, indorses it as sold or sent to A, he obviously means to pass the right of dealing with the — to A alone; and that, after a special indorsement to A, the — cannot be validly transferred to B, otherwise than by A or by A's authority.—16 W. R., O. J., 3.

17. Plaintiff sought to recover the amount of a — drawn by defendant at Patna on defendant at Calcutta payable 41 days after date to S A or order. The defence was that the — was an accommodation bill given to S A without consideration, and that plaintiff, after the — had become due, and after plaintiff had notice that defendant was only surety for S A, gave time to the principal to release his surety. *Held* that the new arrangement did not alter the position of the parties so as to release defendant from his original obligation as principal debtor.—16 W. R., O. J., 16.

18. In a suit to recover the balance due on a — brought by the drawees against the drawers upon the insolvency of the acceptor, there was evidence not only that the drawers were merely the ordinary gomashtas of the acceptor, but also that they had no interest whatever in the bill when drawn; that by local custom they were not liable for the defections of their principal; that the money when procured on the — was applied solely to the purposes of the acceptor; that the drawees received part payment of the — from him and gave him time to pay the remainder; and that the notice of dishonor was not sent to the drawers till ten months afterwards. *Held* that the drawers were not liable.—17 W. R. 442.

19. The drawer, acceptor, and intermediate indorsers of a — which is dishonored, are all liable to the holder; but their liability is not joint as it arises out of different contracts; and a decree obtained against any one of them without satisfaction, cannot be pleaded as a bar to a suit against any other of them.—23 W. R. 444.

See Bill of Exchange 8.
Joinder of Cause of Action 9, 18.
Limitation (Act XIV of 1859) 82.
Registration 20.
Right to Sue 18.

Hosaipore Raj.

Held that the Hosaipore property was a Raj, and that by the rule of the family it was to descend entire to a single heir; that the Government, by setting aside a particular branch of the family, did not confiscate the property and thereby extinguish the rights of every member of the family; that the family custom and the custom of the Raj were not destroyed by the infringements of the custom by virtue of which Chutterdharee acquired the estate; and that he having acquired the estate subject to a particular custom and having himself done nothing destructive of that custom, his heirs were bound by the same custom to the exclusion of the ordinary law of Hindoo inheritance.—W. R. F. B. 97. *See also* 9 W. R., P. C., 15.

Hotchpot.

See Hindoo Law (Coparcenary) 100.
Partition 7*c*, 82.

House.

Boitakhana house. *See* Will 59.

See Appeal 48.
Auction-Purchaser (Execution Sale) 38.
Building.
Co-sharers 27.
Court Fees 19.
Dwelling.
Dwelling-house.
Easement 4.
Ejectment 94.
Hindoo Law (Coparcenary) 58.
Homestead.
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,, (Possession) 12.
Right of Way 12, 20.
,, to Light and Air.
Sale 32.
Set-off 5.
Summary Order 1.
Summons 8.
Transferable Tenure 5.
Will 7, 59.
Zur-i-peshgee Lease 35.

Housebreaking.

Theft is the sequel of and cannot be separated from —.—6 W. R., Cr., 92.

See Housebreaking by Night.

Housebreaking by Night.

1. Five men armed were discovered committing an act of —. One of the party was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers, and the robbers effected their escape, but not before two of them (the prisoners in the case) were identified. *Held* that the crime of which the prisoners were guilty was — and not dacoity. —W. R. Sp., Cr., 39.

2. — and theft form a single offence, and cannot be punished separately, but under s. 457 Penal Code.—2 W. R., Cr., 68 (4 R. J. P. J. 563); 5 W. R., Cr., 49; 6 W. R., Cr., 48; 8 W. R., Cr., 31.

3. Amends cannot be awarded in a case of — or theft.—7 W. R., Cr., 12.

See Criminal Trespass 2.
Cumulative Sentences 2.

House-rent.

1. Where a tenant states that he will vacate a house on a certain date, he is liable for — up to that date at the rate at which he has been holding.—9 W. R. 213.

2. The purchaser at an execution sale of a house in the occupation of a lessee at a fixed rate, has no right to — at any other rate that he may fix in a notice to the lessee.—10 W. R. 267.

3. Where an intervenor as party to a suit has a lien on a house anterior to the sale under which plaintiff purchased it, the latter cannot maintain a right of suit for — against the tenant.—14 W. R. 77.

4. The lessee of a share of a house has a right to raise the rent of such share, while in the occupation of a sub-tenant without a lease, after due notice of the increased rate, and to proceed to eject him if he refuses to pay the higher rent, even though he has been in possession for many years.—24 W. R. 271.

See Court Fees 19.
Indigo 3, 7.
Joinder of Causes of Action 16.
Jurisdiction 16, 117, 143, 264, 396.
Set-off 4.

House Trespass.

1. Going with a forged warrant of arrest and taking away one of the inmates against his will under the authority of such warrant, is — under s. 452 Penal Code. —12 W. R., Cr., 33.

2. A person charged with dacoity and riot and acquitted, cannot be convicted of — if the latter charge was not read out or explained to him, and he was not called on to plead to it.—23 W. R., Cr., 59.

See Grievous Hurt 2.
Illegal Gratification 3.
Lurking House Trespass.
Right of Private Defence 6.

Howala.

1. The resumption by Government of a parent estate does not nullify the existing rights of a howaladar within that estate, or deprive him of the benefit of the presumption arising under s. 16 Act X.—9 W. R. 354.

2. The rights of an auction-purchaser cannot arise under Reg. VIII of 1819 where the lease of a — tenure does not expressly provide for sale for non-payment of rents.—10 W. R. 220.

3. In a suit by a purchaser claiming in virtue of s. 16 Act VIII of 1865 (B. C.), and seeking to eject defendants from land which they have been holding in succession from their fathers as cultivators, and which they allege to have been holding under a — pottah, it is open to defendants to prove that they are howaladars, although they fail to prove the — pottah which they set up.—20 W. R. 315.

4. An auction-purchaser at a sale held under the above Act has a right to get rid of an intermediate holding such as a —, so far as to substitute himself for the howaladar in respect of the collection of the ryot's rents.—22 W. R. 311.

See Abatement 17.
Ejectment 55.
Enhancement 121, 137, 153.
Kubooleut 49.
Mesne Profits 36.
Neem Howala.
Sale 48.

Huqeequt.

See Right of Property 1.

Huq-ee-Zemindaree.

See Jurisdiction 346.

Hurt.

1. A person charged with dacoity or robbery need not be charged with causing — as a separate offence.—1 R. J. P. J. 65.

2. Meaning of the words "or other thing" in s. 328 Penal Code.—1 W. R., Cr., 7.

3. Robbery and voluntarily causing —, when combined, are punishable under s. 394 Penal Code alone, and not under ss. 392 and 394.—2 W. R., Cr., 2.

4. The offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328 Penal Code, and not under s. 326.—4 W. R., Cr., 4.

5. Where a wife died from a chance kick in the spleen caused by her husband, on provocation given by the wife, without knowledge by the husband that the spleen was diseased, and without intention or knowledge that the act was likely to cause — endangering human life, the husband was held guilty of — and not grievous —.—8 W. R., Cr., 29.

6. S. 330 Penal Code does not apply to a case of — caused to a person to extort a confession from her that she was a witch.—13 W. R., Cr., 23.

7. Where, according to the prisoner's own confession (which was the only direct evidence against her), she, with a view of chastising a disobedient and impertinent child, but without any intention of killing her, in a fit of passion struck her and knocked her down senseless, and afterwards hung her up to the beam so as to make it appear that the girl had committed suicide,—*Held* that the conviction should be under s. 323 Penal Code of voluntarily causing —.—18 W. R., Cr., 29.

8. S. 330 Penal Code was intended to describe the offence of inducing a person by — to make a statement or confession having reference to an offence or misconduct whether committed or not.—20 W. R., Cr., 41.

9. The pain caused by a blow across the chest with an umbrella was held not to be of such a trivial character as to come within s. 95 Penal Code, but to come under the definition of — in s. 319.—24 W. R., Cr., 67.

See Autrefois Acquit 8.
Grievous Hurt.
Right of Private Defence 2.
Rioting 4.

Husband and Wife.

1. Abuse of trust by husband. —W. R. F. B. 60.

2. A Mahomedan, in the *kabin-namah* or deed of dower on his marriage with S, stipulated that he should not take a second wife without the permission of S. *Held* that S was not entitled to leave him upon his taking a second wife without her permission.—2 Hay 404 (Marshall 361).

3. Where a husband consented to his wife selling a portion of certain property which he had made over to her for her life only and which was to revert to him on her death, and to her agreeing with the vendee that he (the vendee) should have a right of pre-emption as to the rest of the property, the husband was held bound by such consent.—Sev. 208.

4. Where a husband allows his wife to control certain

HUSBAND AND WIFE (*continued*).

property and mortgage it, she is his agent and bound by her act.—W. R. Sp. 318 (L. R. 96).

5. The Supreme Court of Bombay on its Ecclesiastical side declared incompetent to entertain a suit for the restitution of conjugal rights at the instance of a Parsee wife against her husband.—(P. C.) 4 W. R., P. C., 91 (P. C. R. 265).

6. An agreement in the nature of a deed of compromise was executed in the English form between a — (Armenian Christians) relative to the wife's separate property. In a suit brought by the Official Assignee under the insolvency of the husband to set aside an act done by the wife in plain violation of the agreement, it was held that the fraudulent exclusion out of the settlement of a house alleged to have been purchased by the husband with the wife's money, which was the foundation of the defence, had not been established against the husband; that even if it had been, it could not have been used as a defence in this suit; that if the house was bound by a trust for the children, it could not be subject to a writ of execution for the wife's private debts; and that her proper course would be not to treat the agreement as a nullity, but to act upon it, and enforce it by a bill to compel a settlement of the property which had been improperly withheld.—(P. C.) 4 W. R., P. C., 66 (P. C. R. 431).

7. Jewels given to a married woman during coverture by a relative or a stranger, are property belonging to the separate use of the wife. The subsequent investment of the same in the purchase of real estate conveyed to the wife, does not cause a change in the nature of such property.—1 Hyde 130.

8. A Hindoo woman may at all times sue either alone or jointly with her husband.—1 Hyde 281.

9. A sale by a husband to his wife may be collusive and in fraud of creditors, notwithstanding the payment of the purchase-money by the wife out of her funds.—1 W. R. 319.

10. A charge of adultery by a Mahomedan against his wife does not operate as a divorce, though, if false, it might be an item of ill-usage towards making up a sufficient answer to his claim for restitution of conjugal rights. The husband cannot enforce his right to his wife till he pays the dower, in the absence that is of any sufficient answer to his claim. Ill-treatment by him and his second wife would justify the first wife in leaving him.—3 W. R. 93.

11. Under the Mahomedan law of —, a wife may (except with any fraudulent intent) purchase property as her own, during her husband's lifetime, with money given to her by him on account of dower.—1. W. R. 6.

12. A wife cannot sue for confirmation of possession of property sold in fraud of his creditors by her husband to her in the name of another.—5 W. R. 177.

13. A Hindoo husband, who has been repudiated by his wife on his conversion to Christianity, cannot sue for restitution of conjugal rights.—5 W. R. 235.

14. The ordinary provisions of law relating to execution do not apply to a decree for possession of a wife.—5 W. R., Mis., 29; *see* 16 *post*.

15. When a wife, by virtue of a deed of gift from her husband, sells property, he cannot sell the same subsequently.—6 W. R. 50.

16. A suit will not lie by a husband to recover possession of the person of his wife as a "specific moveable" under s. 200 Act VIII: but a suit will lie by the husband, in the nature of a suit for the restitution of conjugal rights, for a decree declaratory of those rights, to be enforced, in case of disobedience, by the imprisonment of the wife, or the attachment of her property, or both.—6 W. R. 105, 8 W. R. 167, 9 W. R. 552. *See also* 8 W. R., P. C., 8; 20 W. R. 50; 23 W. R. 178, 179.

Such a case cannot be referred to the High Court under Chap. XXIX Act XXV of 1861.—17 W. R., Cr., 13.

17. When a — are trading in partnership, it is only reasonable to presume that an authority from the husband on matters connected with the partnership is binding on the wife.—6 W. R. 254.

18. In a suit to declare certain sales *benamee*, where the property of a husband was sold to realize a fine, and passed from hand to hand until it reached the wife, who was in possession when the sale of the husband's rights and interests took place, it was held that the plaintiff was entitled to a clear finding as to whether the wife held the property in her own right or in trust for her husband, and that the *onus* of showing whence the money came was on the wife.—6 W. R. 312.

It is not for the Court to presume, but for the plaintiff to prove, that there was substantial consideration.—24 W. R. 477.

19. A conveyance of property by a husband to his wife in fraud of creditors, is void whether in satisfaction of dower or not.—7 W. R. 513.

20. In a suit by a Mahomedan wife against her husband after divorce for recovery of property belonging to her, the cause of action arises at the time of separation; and until the husband has proved his right to the property, the presumption is that he only held in behalf of his wife.—9 W. R. 153.

21. Where a Mahomedan husband was found to have paid the purchase-money for a putnee talook standing in the name of his wife, it was held that his having been in possession of the money was *primâ facie* evidence that the putnee talook belonged to himself and not to his wife, and that that presumption was not rebutted by the fact that he purchased the putnee in the name of his wife.—(F. B.) 9 W. R. 338.

22. Where a widow was, on the death of her first husband, made defendant in a suit pending against him, and married again between the original and final judgments against her, her second husband was held not liable, the word "judgment" in the first part of s. 105 Act VIII being held not to include the judgment on appeal.—9 W. R. 442.

23. Where rights of ownership had been exercised for years by a Mahomedan husband, and never by the wife, over property descended from the wife's father, and which was afterwards sold in satisfaction of the husband's debts, the wife was held not entitled to recover possession.—11 W. R. 17.

24. Under Mahomedan law, it is only by payment of the prompt dower that the husband is entitled to consummate the marriage or enforce his conjugal rights.—13 W. R. 371.

25. Where property is bought from a wife as the ostensible owner, the husband consenting to the sale, and the transaction is *bonâ fide* on the part of the purchaser for a consideration, the purchase is a good one even if the property is not the wife's but the husband's.—15 W. R. 19.

26. Where a Mahomedan wife re-conveys to her husband the property received from him in lieu of dower, and he gives a written agreement covenanting to pay her a certain annuity, he cannot avoid payment on any of the pleas on which a Mahomedan husband may avoid payment of maintenance.—15 W. R. 296.

27. When the fraudulent intention of a conveyance is not carried out, a *locus pœnitentiæ* is left to a wife entitling her to ask for quiet possession if it has been prejudicially affected by her husband for his own ends by a fictitious decision under Act X.—15 W. R. 312.

28. Sagaye wife. *See* Maintenance 32.

29. The mere taking of a first wife's jewels, or the marrying of a second wife by a Hindoo, cannot be set up as a bar to his claim against the former for restitution of conjugal rights.—17 W. R. 522.

30. Where a Mahomedan husband, on contracting a second marriage, executed an agreement giving his first wife a monthly allowance and stipulating to give her or (at her death) her children a certain share of what he was possessed of or might acquire, the first wife died leaving children of whom plaintiff was one,—*Held* that, as to property acquired in the wife's lifetime, the right to have the agreement enforced would at the latest accrue at her death, plaintiff having three years from attaining his majority to bring his suit for non-performance of that part of the agreement; and as to property acquired since the wife's death, the agreement was a *nudum pactum*, there having been no consideration for the promise.—18 W. R. 173.

31. Where a husband writes and signs a bond in the name of his wife, there is a tacit or implied contract by him that he had authority to do so. If he had not authority, the obligee may sue for damages for breach of contract or for false representation.—18 W. R. 249.

32. An order for maintenance having been made under s. 536 Act X of 1872, the plaintiff applied to have the order enforced. The defendant being called on to show cause why the order should not be enforced, divorced his

HUSBAND AND WIFE (*continued*).

wife (the plaintiff) in the presence of the Court. *Held* that, even if such divorce made such an alteration in the circumstances as to justify the Court, on the application of the husband (the defendant), in altering the order for maintenance, yet the defendant would not be relieved from obeying the order during the time which had elapsed up to the date when and until that change of circumstances had occurred.—19 W. R., Cr., 73.

33. Where a decree for the return of plaintiff's minor wife and certain jewellery from defendant's illegal possession and keeping was upheld in appeal, it was held that the Lower Appellate Court could only enjoin defendant to abstain from putting any obstruction in the way of the wife returning to her husband.—20 W. R. 92.

34. S. 4 Act X of 1865 cannot prevent the operation of a marriage settlement restraining a wife from anticipating or alienating property settled to her separate use; such restraint being created not by the marriage but by the settlement.—(O. J.) 22 W. R. 175.

35. *Semble*. Where a contract is made after Act III of 1874 came into operation, there will be a remedy against the separate property of the wife although there is a clause against alienation or anticipation in the marriage settlement.—(O. J.) *Ib.*

36. A purchase by the wife (of land attached in execution of a decree against the husband), supported by possession, is not to be deemed bad only on the ground of suspicion of possible *mala fides;* there should be a clear finding that, instead of being a purchase by the wife, it was a purchase by the husband in the wife's name.—22 W. R. 402.

37. Where a woman sues to recover money advanced in a bond executed in her name by her father-in-law, it is open to the defendant to plead that the money was not lent by the woman, but that the bond was merely an acknowledgment of indebtedness from him to her husband. —22 W. R. 413.

38. Where it was the universal custom of the community to which the plaintiff belonged that a child wife should remain away from her husband until a certain event had occurred,—*Held* that the Lower Appellate Court was justified, while such contingency had not happened, in refusing to order such a wife to go to her husband although the marriage was valid.—23 W. R. 22. *See* 23 W. R. 178. 25 W. R. 386.

39. A post-nuptial contract is not a mere nullity at law. —23 W. R. 66.

40. Where a husband stipulated in such a contract to do nothing without the permission of his wife on pain of immediate divorce and realization of *den mohur*, and also to pay over to her all the money he might earn, these stipulations were held to be illegal because contrary to public policy. The last stipulation, however, was construed to mean payment after reasonable deduction on account of the husband's necessary expenses; and in a suit to enforce such a contract, the Court decreed to the plaintiff (the wife) a fair sum for her maintenance, holding that under s. 57 Act IX of 1872 such part only of the agreement should be enforced as was legal.—*Ib.*

41. According to Hindoo law, after marriage, a husband is the legal guardian of his wife's person and property, whether she is a major or minor.—23 W. R. 178. *See* 25 W. R. 386.

42. A husband who puts his wife into the position of being the true owner of an estate, and allows her to deal with the world as the true owner, deprives himself of the right to set up or rely on his *benamee* title.—24 W. R. 79.

43. Where a suit to have it declared that defendant was plaintiff's wife and was bound to live with him, was dismissed on the ground that custom required that, in order to constitute such a right, there should have been a second marriage,—*Held* that an issue should have been framed as to whether or not such a custom existed.—24 W. R. 228.

44. Where — are living together, and the wife has property of her own which the husband is in possession of and manages, his possession must be considered to be his wife's and not adverse to her; but he has no right to part with such property without her consent.—24 W. R. 274.

45. Where a wife had colluded with her husband to buy up a decree under which he and others were judgment-debtors, and the husband subsequently sought to establish his claim to the purchase on the ground that it had really been made with his own money, and the wife pleaded that the husband's fraud had disqualified him,—*Held* that, as the wife was also a party to the fraud, there was no reason why, as against her, the decree should not be made in favor of the husband, thus enabling the Court to rectify the fraud and do justice to the other judgment-debtors who were the parties really defrauded by the result of the execution proceedings.—25 W. R. 219.

46. Where a Mahomedan wife never asserted any right to certain land under a *kabin-namah*, but allowed her husband to remain the apparent owner even after she found him dealing with and attempting to sell the land, and took no steps to prevent him from putting the defendants in possession as purchasers, such conduct on her part was held to debar her, and any one claiming under her, from coming into Court to eject those who have purchased *bonâ fide* in ignorance of her ever having had any title.—25 W. R. 281.

See Adultery 6.
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Ijara.

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Churs 38.
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Intervenor 24.
Jurisdiction 430.
Lease 25, 54, 66.
Limitation 157.
Mesne Profits 98.
Mortgage 264.
Remand 28.
Small Cause Court 15.

Ikrarnamah.

1. Where an — was so construed as to give the benefit of survivorship.—Marshall 589.

2. K was held not to have acted illegally and improperly in joining R as a plaintiff in a suit, because on the dismissal of that suit, and during the pendency of another suit brought against them by the defendant for the possession of the same land which was the subject of the former suit, K executed an — in favor of R to the effect that, as R had no right or interest in that land, if a decree were given against them, K would hold R harmless; the consideration on which the — was founded not being illegal and immoral.—11 W. R. 208.

3. An — executed between plaintiffs and defendants by which plaintiffs undertook to satisfy any claims to mesne profits that might be advanced by the parties dispossessed, was held to be no protection to defendants in the case of parties dispossessed by plaintiffs.—17 W. R. 228.

See Arbitration 4.
Churs 10.
Compromise 8.
Contract 18.
Joint Decree 5.
Jurisdiction 279.
Minor 7.
Mortgage 41, 204.
Onus Probandi 170.
Partition 2.
Rent 42.

Illegal Gratification.

1. The evidence of a person who bribes is admissible against the person bribed.—3 W. R., Cr., 19.

2. A conviction on a charge of attempting to receive an — for influencing a public servant in the exercise of his public functions, is illegal as disclosing no legal offence when it omits to state the person or persons for whom the — was obtained, or the public servant to be influenced in the exercise of his public functions.—3 W. R., Cr., 69.

3. It is not house-trespass and extortion under ss. 451 and 384 Penal Code, but — under s. 161 as regards the constable, and abetment of — as regards the others, when a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a certain sum of money by the latter.—5 W. R., Cr., 49.

4. A Deputy Magistrate vested with the powers of a subordinate Magistrate of the second class is not competent to initiate a charge under s. 213 Penal Code.—6 W. R., Cr., 93.

5. A person who *in fact*, though wrongly, discharges the duties of an office whereby he is to all appearance a public servant, may as such be tried for receiving an — under s. 161 Penal Code.—16 W. R., Cr., 27.

6. On a conviction of taking —, a simple order to refund the money taken is not sufficient.—16 W. R., Cr., 74.

See Ameen 15.
Police 8.
Withdrawal of Complaint 1.

Illegitimate Child.

1. The State, and not the Mahomedan mother, is entitled to succeed to the property of an — dying intestate and leaving no wife or legitimate child. If he was brought up and died a Christian, the Mahomedan law does not apply.—1 W. R. 272.

2. A Civil Court has no jurisdiction to make a declaratory order as to the paternity of an —.—20 W. R., Cr., 58.

3. The High Court alone can interfere with the order of a Magistrate declaring a person to be the father of an —; to obtain such interference, proof would be required that the Magistrate improperly admitted or rejected evidence.—*Ib.*

See Certificate 88.
Gift 41.
Hindoo Law (Coparcenary) 22.
" " (Inheritance and Succession) 8, 82.
Legitimacy 9.
Mahomedan Law 21, 22, 24, 35.
Maintenance 13, 34.
Marriage 26.
Will 32.

Immorality.

See Ancestral Property 21.
Certificate 80.
Champerty 6.
Hindoo Law (Adoption) 72.
" " (Sale) 1.
" Widow 110.
Ikrarnamah 2.
Public Policy 2, 3.

Immoveable Property.

1. Mat-huts of ryots are not — within the meaning of s. 11 Act XLII of 1860.—S. C. C. 29. *See* 10 W. R. 258.

2. The — of a debtor which he permits a relative to deal with as his own, and to sell to a *bonâ fide* purchaser for valuable consideration, cannot be sold in execution of a money-decree obtained after the transfer.—2 W. R. 291.

3. A decree for possession of land is the title-deed of the estate, and like all other similar muniments, is real or —. 4 W. R., Mis., 22.

See Arbitration 33.
Attached Property.
Bank of Bengal 1, 2.
Certificate 29.
Gift 28.
Hindoo Law (Inheritance and Succession) 6.
" " (Sale) 2, 3.
" Widow 65, 78.
Jurisdiction 203, 394.
Land.
Limitation 123.
" (Act XIV of 1859) 47, 121, 218, 315.
Majority 5.
Money Decree 2, 5, 9.
Practice (Attachment) 5, 15, 20.
" (Execution of Decree) 1, 13, 36, 38, 48, 91, 104.
Registration 71, 76, 77.
Res Judicata 85.
Sale 31, 42, 57, 125, 172, 286.
Securities (Government) 3.

IMMOVEABLE PROPERTY (*continued*).

See Self-acquired Property 6.
Special Appeal 55.
Streedhan 2, 3, 4, 5, 14, 15.
Summary Award for Rent 1*a*.
Title 10.
Transferable Tenure 10.
Vendor and Purchaser 59.
Watercourse 8.
Will 15.

Imprisonment.

1. A sentence of — cannot be suspended to take effect at a future period, but must commence from the time that the sentence is passed.—12 W. R., Cr., 47.

2. In a case of assault, a sentence inflicting a fine and awarding — for one month in default of payment of the fine, was held to be illegal with reference to ss. 65 and 352 Penal Code.—16 W. R., Cr., 42.

3. The Sessions Judge, in his warrant, should specify whether the — awarded to a person convicted under s. 80 Act VIII of 1871 should be simple or rigorous, notwithstanding that that Act is silent as to the nature of —.—18 W. R., Cr., 3.

4. Abolition of — for debt.—*See* Will 68.

See Cumulative Sentences 4, 9.
Detention.
Fine 5, 6, 9, 12, 14.
Income Tax 3.
Insolvency 18.
Punishment 5.
Rape 6.
Sheriff 3.
Summary Trial 4.
Transportation 1, 2, 3, 6.
Whipping 3, 4, 9.
Wrongful Confinement.

Incapacity.

1. Of Judge from interest. —*See* Judge 1; Recorders 6.
2. Of Judge as witness.—*See* Judge 2.

See Blind.
Deaf and Dumb.
Deed 1.
Exclusion from Inheritance.
Hindoo Law (Adoption) 75.
„ „ (Alienation) 15, 22.
Idiot.
Insanity.
Leprosy.
Lunacy.
Practice (Execution of Decree) 180.

Income Tax.

1. S. 137 Act XXXII of 1860 does not oblige a person seeking a refund of — to apply to the Commissioner. He may legally sue in a Civil Court.—11 W. R. 425.

2. Where a third party objects to an auction sale of immoveable property, his right of suit to prove the property to be his is not barred by s. 184 Act XXXII of 1860 because he omits to deposit the money demanded by Government or to file security.—14 W. R. 276.

3. A Magistrate has no power, under s. 25 Act IX of 1869, to sentence to imprisonment in default of payment of fine imposed for not paying —.—14 W. R., Cr., 70.

4. No appeal lies to a Sessions Judge from the order of a Magistrate fining a defaulter under the same section.—14 W. R., Cr., 71.

5. A petition submitting the schedule of his income, filed by a petitioner in the — office, is admissible as evidence against the person submitting and subscribing it, but it is not conclusive; and a false statement made in it, though it may render the petitioner amenable to a prosecution under s. 19 Act IX of 1869, does not estop the person verifying the petition from proving that he made the statement to evade the —, and that the fact was otherwise than as stated.—24 W. R. 173.

See Evidence (Admissions and Statements) 43.
„ (Documentary) 18, 58.
„ (Estoppel) 51.
Limitation 125.
Onus Probandi 108.
Sale Law (Act XI of 1859) 13.

Independent States.

The transactions of — between each other are governed by other laws than those which Municipal Courts administer. —(P. C.) 4 W. R., P. C., 42 (P. C. R. 373).

See Ava.
Bhootan.
Bhownuggur.
Confiscation 1.
Declaratory Decree 25.
High Court 79.
Jurisdiction 420, 444, 514.
Practice (Execution of Decree) 166.
Res Judicata 37.

Indigo.

1. In the absence of any covenant by the assignee of the lease of an — factory to take the liability for previous rents on himself, he is only liable for rent which accrued after the date of his assignment. Meaning of *Dena powna*.—(F. B.) W. R. F. B. 167 (L. R. 7). *See also* 6 W. R. (Act X) 89, 10 W. R. 311.

2. By a contract for the cultivation of — defendant agreed, in consideration of certain payments, to prepare the land, sow, reap, etc.; and it was stipulated that, if defendant neglected to cultivate, the amlah of the factory might do so and deduct the expense from the money payable to defendant; and that if the land were not prepared by a certain time, defendant should pay compensation at the rate of 12Rs. per bergah. *Held* (1) that plaintiff was not bound to enter upon and cultivate the land upon default by defendant; (2) that the stipulation for the payment by defendant of 12Rs. per bergah was a reservation in the nature of liquidated damages, and that plaintiff was not entitled to recover more than that sum in respect of the breach of that stipulation although loss to a greater extent may have been sustained.—2 Hay 391 (Marshall 386).

3. A suit for arrears of rent due on account of an — factory is not a suit for arrears of rent due on account of land within cl. 4 s. 23 Act X of 1859, and must therefore be brought in the Civil Court.—2 Hay 529 (Marshall 401).

4. Where a valuable — crop had been raised by an appellant to the Privy Council upon the property decreed against him, the possession thereof was postponed until he could remove it in due time.—2 Hay 674.

5. There is nothing inconsistent in the fact of an — factory taking a lease for a term of a whole village, and still retaining their *jotedaree* title over a small area comprised in the village. If they have more lands in their occupation as *jotedars* than they aver, the lessor has his remedy for possession of the excess lands if any.—Sev. 349.

6. Where the holder of a lien on an — factory pledged as security for the rent has obtained a decree for such rent and cannot realize it from the estate of the lessee or his assigns, he must sue in the Civil Court to enforce his right to follow the property pledged.—W. R. Sp. (Act X) 127.

7. Rent of the land on which an — factory stands can be sued for under Act X of 1859.—2 W. R. (Act X) 9 (4 R. J. P. J. 22). *See* 14 W. R. 246, 15 W. R. 463.

8. A planter is not absolved from liability to rent for

INDIGO (*continued*).

lands which he claims to hold under various tenures other than from plaintiff and which he has so covered with — as to have obliterated the boundary marks.—2 W. R. (Act X) 49.

9. The account books of an — factory regularly sworn to by the manager are legal evidence of payment of rent.—2 W. R. (Act X) 75.

10. Damages have to be assessed for the period during which plaintiff was illegally put out of possession of an — factory and its appurtenances, where an agreement for rent had been entered into between plaintiff and her lessees and she was deprived of all benefit from *chur* lands fit only for —.—5 W. R. 194.

11. Where there has been a breach of contract to sow and cultivate —, both liquidated damages and the amount advanced to the cultivators cannot be recovered under s. 3 Act X of 1836.—5 W. R. 277.

12. An agreement for personal service in conveying — from the field to the vats is not a contract the breach of which is punishable by s. 490 Penal Code.—6 W. R., Cr., 80.

13. Where a ryot takes advances from an — factory not to be repaid until expiration of agreement, and then to be repaid either in cash or with produce, he cannot be sued for a refund of the balance in consequence of the factory being closed before the expiration of the contract.—7 W. R. 388.

14. An instigator can, under s. 3 Act X of 1836, be made liable to the extent of the damage sustained; but a plaintiff in such a case cannot obtain liquidated damages calculated on the penal amount due by the ryots under their contracts, but must prove the amount of damage done.—8 W. R. 257.

15. In a case of tort where defendants maliciously and from gross negligence allowed their cows to trespass and destroy — plants, the plaintiff was held entitled not to the mere value of the growing plants destroyed, but to substantial damages compensating for loss of profit.—9 W. R. 156.

16. The *dena porna* clause in a deed of purchase of a share of an — factory does not render the purchaser liable for a decree against his vendor in an action of tort after the death of the latter.—9 W. R. 271.

17. Where the lease of certain factories is set aside by superior authority, and the lessees, after agreeing to deliver up all the manufactured —, failed to do so, the remedy is by suit for damages for breach of contract.—9 W. R. 367.

18. The non-completion of an agreement of compromise does not exonerate defendant from performing his part of the contract for sowing —.—10 W. R. 420.

19. Where a shareholder and manager of an — factory stipulated in a kuboolcut that, in the event of non-punctual payment of rent, the lessor was at liberty to take khas possession, and that, on another mookhtar or manager being appointed or the property being sold, the factory as well as the mookhtar or manager or purchaser would be responsible for all arrears of rent, and then mortgages the factory to L,—*Held* that the plaintiff, in executing his money-decree under Act X, could have proceeded under s. 110 and then under s. 111 if L objected to the sale, but that he, having no prior lien upon the factory which would give him a preference over L, had no cause of action as against L.—11 W. R. 194.

20. S. 8 Reg. VI of 1823 refers only to cases where a joint contract is made with several persons having separate interests and liabilities in the subject-matter of the contract; but where the interests and liabilities are joint, there is no reason why the names of all the parties should not be included, for where there is no separate liability no specification is required.—12 W. R. 309.

21. An — contract is not without consideration because, during the period it has to run, the debt due by the ryot is extinguished by the delivery of — leaves. The contract is entire and upon one consideration, and cannot become void by any change in the situation of the parties.—17 W. R. 91.

22. In a case in which the *zillahdar* of an — factory preferred a charge against certain persons for cutting and carrying away — crop which was in his charge, the Joint Magistrate was held to have wrongly dismissed the charge on the ground that a more responsible servant ought to have laid the complaint.—18 W. R., Cr., 55.

See Bond 8, 16.
Breach of Contract 1, 3, 8.
Construction 157.
Contract 5, 81.
Co-sharers 81*a*.
Damages 2, 3, 6, 8, 9, 20, 52.
Ejectment 10, 89.
Enhancement 68, 122.
False Evidence 25.
Injunction 9.
Jurisdiction 226, 499.
Lease 58.
Limitation 5.
,, (Act XIV of 1859) 1, 75, 89, 104, 105, 202.
Mesne Profits 70.
Occupancy 104.
Principal and Agent 2, 22, 36, 42, 55.
Res Judicata 16.
Stamp Duty 20.
Voluntary Payment 5.

Infancy.

See Child.
Minor.

Informality.

See Absconding Offender 8.
Dismissal of Suit or Appeal 18.
Jurisdiction 47.
Land Dispute 15.
Limitation (Act XIV of 1859) 299.
Notice 26.

Information.

1. S. 177 Penal Code does not apply to the case of *any person* who is examined by a Police Officer making a false statement, but to cases of certain persons legally bound to give certain —.—12 W. R., Cr., 23.

2. The rule which protects witnesses from being examined as to — given by them to the Government for the discovery of offenders, is confined to offences against the State or for breach of the Revenue Laws, and does not apply to cases where the — has been communicated to, and been acted on by, a Magistrate *quâ* Magistrate.—13 W. R., Cr., 1.

3. S. 176 Penal Code applies to persons upon whom an obligation is imposed by law to furnish certain — to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation.—16 W. R., Cr., 35; 18 W. R., Cr., 22.

4. Discussion as to the applicability of s. 422 Act XXV of 1861 to a case, under s. 202 Penal Code, of omission to give — respecting an offence.—18 W. R., Cr., 31.

5. What is meant by — in s. 138 Act XXV of 1861.—19 W. R., Cr., 57.

6. Under Act V of 1861 a Police Officer is bound to communicate — to his superior officer regarding the commission of a riot and to make an entry thereof in his diary; and the omission to give such — brings him within the purview of s. 177 Penal Code.—21 W. R., Cr., 30.

7. When an accused is charged with having omitted to give — which he is legally bound to give under s. 90 Act X of 1872, it should appear what the offence is as to the commission of which the accused wilfully omitted to give —, that the specified offence was in fact committed by some one, and that the accused knew of its having been committed.—22 W. R., Cr., 42.

8. The duty imposed by s. 90 Act X of 1872 upon village herdmen, etc., of giving — as to the occurrence of any sudden or unnatural death, is intended to apply in what cases.—23 W. R., Cr., 60.

INFORMATION (*continued*).

9. When such obligation rests on the resident agent, and when on the owner.—*Ib.*

See Culpable Homicide (not amounting to Murder) 8.
Dacoity 9.
Evidence 98.
False Information.

Informer.

Quære. Whether a person who does not come forward in person as an — is entitled to any part of the penalties recovered.—16 W. R., Cr., 65.

Inhabitancy.

See Jurisdiction 28.

Inheritance.

See Auction-Purchaser (Execution Sale) 28.
Certificate 5, 10.
Christian.
Co-heirs.
Evidence 60.
Exclusion from Inheritance.
Forfeiture 15.
Ghatwals 1.
Heir.
Hindoo Law (Adoption) 1, 4.
,, ,, (Inheritance and Succession).
Judgment 18.
Mahomedan Law 1, 3, 4, 6, 8, 14, 15, 16, 18, 19, 25, 26, 34.
Maintenance 1.
Onus Probandi 160.
Partition 4.
Pottah 25.
Primogeniture.
Remoteness.
Res Judicata 64.
Small Cause Court 9.

Injunction.

1. Commitment for breach of an —.—Sev. 951.

2. Proof of damages is not necessary to sustain an action for an — to restrain defendant without any title from collecting excess rent from plaintiff's estate.—W. R. Sp. 362 (L. R. 135).

3. The power given by s. 92 Act VIII of issuing an — and appointing a receiver or manager *pendente lite* ought to be most cautiously exercised.—13 W. R. 60.

4. The admission of intention to take the property in dispute in a suit in order to invest it in trade shows that the property is in danger of being *alienated* within the meaning of s. 92.—13 W. R. 95.

5. The denial of compensation for needless — under s. 96 Act VIII does not bar a suit for the purpose of obtaining such compensation.—13 W. R. 305.

6. In such a suit the cause of action, under cl. 2 s. 1 Act XIV, accrues when plaintiff is damaged by the wrongful — and continues as long as the — remains in force.—*Ib.*

7. An — cannot be issued under s. 92 Act VIII on a mere allegation that the defendant wishes to realize debts by bringing actions in Court, without proof of an intention of waste, damage, or alienation.—14 W. R. 409.

8. The Court refused to issue an — to a co-sharer not to cultivate *ijmalee* lands because of alleged interference with the rights of the other co-sharers, the remedy lying in an action for damages.—18 W. R. 408.

9. A 4-anna shareholder who sued to restrain the 12-anna shareholder from carrying on the cultivation of indigo without his permission (defendant claiming exclusive possession of the joint estate), was held entitled to a perpetual — directed particularly to defendant's trespass.—20 W. R. 168.

10. Where a decree-holder agrees for a good consideration not to enforce his decree, the Court may legitimately, on the suit of the opposite party, issue an — against the former not to do what he has agreed not to do, s. 206 Act VIII notwithstanding.—22 W. R. 194.

11. The purchaser of a share of a decree, who has failed to get the Court executing it to put him upon the record for the purpose of obtaining the benefit of the decree, has no right to an — to prevent the decree-holder from executing the whole decree without regard to the sale, even if the purchase is made on behalf of the judgment-debtor; he could only get a right to an — of the kind if the sale amounted to a release from the decree-holder to the judgment-debtor from his liability under the decree.—22 W. R. 506.

12. No case was held to have been made out for the issue of an — to stop the business of brick-making where the land had been used for that purpose for 25 years and had, instead of being injured, been placed in a better condition.—23 W. R. 298.

See Attached Property 42.
Breach of Contract 10.
Damages 70.
Declaratory Decree 20, 27.
Husband and Wife 38.
Insolvency 7.
Interest 88.
Marriage 40.
Practice (Attachment) 18.
Right to Sue 15.
Right of Way 28.
Sale 68.
Summary Order 1.
Talook 1.
Trade-mark 1, 2.

Insanity.

1. Right of daughter to sue to recover possession of property left by her father during her mother's —.—1 W. R. 23.

2. Course to be pursued by Sessions Judges with regard to apparently insane persons charged with murder or other offences.—1 W. R., Cr., 1, 11; 3 W. R., Cr., 57, 70.

3. Course to be pursued on the acquittal of an accused person on the ground of —.—1 W. R., Cr., 15.

4. The absence of all motive for a crime, when corroborated by independent evidence of the prisoner's previous —, is not without weight.—1 W. R., Cr., 19.

5. Judge should make enquiry under Act XXXV of 1858 if insane person does not appear after service of notice.—2 W. R., Mis., 7.

6. Discussion as to — in the case of a person charged with murder.—3 W. R., Cr., 9 (4 R. J. P. J. 567).

7. Where a prisoner, after conviction by Sessions Judge, was acquitted by the High Court on the ground of —, and directed to be kept in safe custody pending the orders of the Local Government to be applied for by the Judge.—7 W. R., Cr., 42.

8. The fact of unsoundness of mind is one which must be clearly and distinctly proved before any jury is justified in returning a verdict under s. 84 Penal Code.—20 W. R., Cr., 70.

9. The bare assertion of witnesses, unsupported by any details of the causes, the course, and the treatment of the malady, ought not to be accepted as satisfactory proof of —.—22 W. R. 33.

10. The test to determine whether a person who has committed an act which is charged against him as an offence was of unsound mind at the time of its commission is whether he knew that he was doing wrong.—24 W. R., Cr., 5.

See Evidence (Estoppel) 114.
Hindoo Law (Adoption) 10.

INSANITY (*continued*).

See Hindoo Law (Inheritance and Succession) 97, 98.
Idiot.
Limitation 74.
Lunatic.
Mahomedan Law 18.
Practice (Execution of Decree) 180.

Insolvency.

1. A single creditor is not entitled to make the assets of an insolvent debtor solely liable for his debt.—2 Hay 606.

2. A discharge under 11 Vict. c. 21 s. 60, taken in connection with 5 and 6 Vict. c. 122, is good and valid in respect of a debt not entered in the insolvent's schedule at the time of his final discharge; and subsequently acquired property cannot be attached for any debt discharged under the —.—2 Hyde 1.

3. To an action brought, prosecuted, or defended by the Official Assignee, it cannot be objected that such action was brought, prosecuted, or defended without leave first obtained from the Court. Should, however, the Official Assignee bring, prosecute, or defend any such action without such leave, he will do so at his own risk in regard to the matter of costs.—2 Hyde 150.

4. The agent of a company or private individual, who procures and receives parcels for transmission by his employers, or who by his personal exertions obtains passengers for their dawk, although he may be entrusted with the receipt or price of carriage, and is paid by commission, is not a broker or trader within the meaning of the Insolvent Act.—2 Hyde 177.

5. The annulling of the fiat contemplated by the proviso of 11 Vict. c. 21 s. 8 applies only to cases in which the original judgment has been the result of mistake of fact, misapprehension, or fraud.—2 Hyde 180.

6. Reckless trading on the part of a debtor is no bar to his discharge under s. 273 Act VIII if, at the time of his arrest, he be not possessed of means to satisfy the decree.—4 W. R., Mis., 8.

7. Where money deposited in Court is paid to an insolvent's creditors instead of to the Official Assignee, the latter's remedy is a suit for an injunction to restrain the creditors and an application for an order under s. 92 Act VIII.—12 W. R. 103.

8. Where a widow administering her husband's estate sues to recover certain moveable property appropriated by her son, who pleads that it was fraudulently kept out of his father's schedule when the latter passed through the Insolvent Court,—*Held* that where the Official Assignee refuses to make claim to property in dispute, no third party can set up a claim, the right of ownership being vested in the plaintiff notwithstanding the alleged fraud.—14 W. R. 136.

9. Where the parties omitted to have the evidence recorded as required by s. 72 of the Insolvent Act (11 Vict. c. 21), a party appealing against the order based on the evidence was held not to be in a position to be heard before the Appellate Court.—15 W. R., O. J., 16.

10. The Insolvent Court has a discretionary power under s. 26 of the same Act, when it finds that property belonging to a debt due to the insolvent is in the possession of another person, to make an order on such person to make over such property or debt, or any part thereof, to the Official Assignee.—*Ib.*

11. The vesting of an insolvent's property in the Official Assignee is liable to be divested by a sale in pursuance of an attachment subsisting at the time of the vesting order.—15 W. R. 257.

12. Small Cause Courts are competent, under s. 273 Act VIII and s. 8 Act XXIII of 1861, to enquire into the allegation of — when made before them.—15 W. R. 571.

13. The question of the sufficiency of the security tendered by an insolvent is one entirely for the Lower Court to determine.—*Ib.*

14. An authority (assuming it to be sufficient) given by the Official Assignee to settle the outstandings of one who has filed a petition of — does not enure after the dismissal of the petition, and cannot entitle the person so authorised to sue at all.—17 W. R. 85.

15. The mere fact that a payment was made to a person at a time when his petition was upon the file of the Insolvent Court, which petition was afterwards dismissed, does not invalidate the payment.—*Ib.*

16. Except under very special circumstances, a Judge ought not to make an order for the discharge of an insolvent under s. 273 Act VIII.—21 W. R. 185.

Nor unless the insolvent satisfies the Judge that he is acting *bonâ fide*.—25 W. R. 95.

17. S. 273 does not apply to a case of — where the whole of the debtor's property is vested in the Official Assignee. *Ib.*

18. The general design of s. 273 *et seq.* Act VIII is that a man is not to be needlessly and uselessly detained in prison; there must be some object in the imprisonment.—(O. J.) 22 W. R. 257.

See Court Fees 10.
High Court 100.
Hoondee 18.
Limitation 78.
Mortgage 87, 110.
Practice (Attachment) 87.
,, (Execution of Decree) 154, 187.
Principal and Agent 14.
Sale 122.
Will 68.

Instalments.

1. The discretion vested in Courts by s. 194 Act VIII of 1859 of ordering payment by — should not be exercised without sufficient reason.—2 Hay 68.

2. S. 194 is not applicable to an action for money due on an instalment-bond, the terms of which have been broken.—2 Hay 95.

3. A suit will lie for — which accrued due within 12 years. Where the bond contains a forfeiture-clause, the obligee may waive it. A fresh cause of action for the whole amount of the bond accrues, as, upon each successive failure of the obligor to pay an instalment, a fresh cause of forfeiture arises.—Sev. 240. *See also* 8 W. R. 138.

4. *Quære.* Whether a suit on an instalment-bond which makes the whole amount payable on the first default, must be instituted within 3 years from such default.—1 W. R. 189. *See* 7 W. R. 21, 11 W. R. 570, *and* 20 *post.*

5. Payments made and accepted afterwards may operate to waive the effect of a default and to restore the provision for payment by —.—*Ib.* (*Over-ruled*) *See* 7 W. R. 21.

6. After decree for a fixed sum, judgment-debtor cannot be allowed to pay by — without consent of decree-holder.—1 W. R., Mis., 1, 5.

7. Each instalment of a *kistbundee*, as it accrues due, constitutes a fresh cause of action.—2 W. R. 39.

8. A *kistbundee* is part of, or incidental to, the decree of the Court, and cannot be altered after the decree is finally given, except for correction of errors.—2 W. R., S. C. C., 3 (S. C. C. 114). *See* 14 W. R. 430.

9. The mere absence of an indorsement on the back of a *kistbundee* cannot prevail against positive proof of payment.—3 W. R., Mis., 23. *See* 8 W. R. 316.

10. A suit may lie on an instalment-bond notwithstanding that the terms of the bond give the plaintiff a right to execute it as a decree.—4 W. R. 81.

And notwithstanding that execution was barred by limitation.—14 W. R. 430.

11. A creditor upon an instalment-bond may credit a payment made by his debtor in 1270 to the instalment due in 1267, in the absence of anything to show that the payment was for any particular instalment, or intended to be credited for any particular part of the general debt.—5 W. R. 45.

12. The payment in 1270 was such an acknowledgment of the debt as to give the creditor his cause of action.—*Ib.*

13. An arrangement come to, since the passing of a decree, between the decree-holder and judgment-debtor, whereby the sum covered by the decree was to be paid by —, which arrangement was recognized by the Court and incorporated with the decree, may be enforced without the necessity of a new suit.—5 W. R., Mis., 19;

INSTALMENTS (*continued*).

6 W. R., Cr., 1; 11 W. R. 86; 21 W. R. 310. *See also* 24 W. R. 205. *But see* 15 W. R. 542, 24 W. R. 282.

14. When a plaintiff, suing on an instalment-bond, has obtained decrees for two successive —, and recovered all in execution save a portion of the second instalment, his suit for the unpaid portion and for the third instalment with interest is not affected by s. 7 Act VIII, there being no relinquishment.—7 W. R. 309.

15. In a suit on the part of the Rajah of Durbunga for unpaid — of rent where the agreement under which defendant held was that he should pay his Government revenue through the Rajah,—*Held* that the rule which prevailed in that part of the country amongst ordinary tenants of paying rent month by month was not applicable to defendant, and that the — of rent and interest thereon were to be calculated according to the Government rules for the payment of revenue.—10 W. R. 368.

16. A plaintiff is entitled to prove the payments made under an instalment-bond for the purpose of showing that his right to sue out execution under the instalment-bond was not bound by limitation.—11 W. R. 232, 15 W. R. 459.

17. Where a party having a lien on a judgment-debtor's property as well as a money decree, enters into a *kistbundee* giving up her right to execute the decree, the original debt is not extinguished, nor is the lien done away with.—11 W. R. 481.

18. On a judgment-debtor's failure to pay on an instalment-bond, it is not imperative on the decree-holder to sell him up at once, the non-payment of — being a recurring cause of action operative within a limit of 3 years.—12 W. R. 71.

19. Where interest is not provided for in a decree ordering payment by —, the Court executing it is bound to refuse to give interest if objected to. In such a case the decree-holder, if subjected to loss by delay, may proceed against any property liable to attachment and sale on default of payment of any of the —.—14 W. R. 324.

20. A decree directing payment by — ought to be executed to the extent of the instalments falling due within 3 years before the application for execution.—15 W. R. 547, 23 W. R. 41.

21. Where a plaintiff sues upon a *kistbundee* and prays to have his claim declared payable by the sale of the property mortgaged therein, it is right to restrict him to that property.—18 W. R. 334.

22. In a suit to recover arrears of rent and an increment of 50 per cent. stipulated for in the kubooleut in the event of non-payment of an instalment on the due date,—*Held* that this increment was in the nature of a penalty, and plaintiff was entitled to recover only so much as would compensate him for his loss.—20 W. R. 257.

23. Where two or more — are still due on a promissory note at the time when plaintiff brings his suit, he should sue for them all in one action and not separately for each or some of them.—20 W. R. 358.

24. In a suit for rent where the kubooleut stipulated that payment should be made in monthly —, the mere fact of the landlord not having strictly enforced the terms of the kubooleut before cannot prevent him from doing so now.—21 W. R. 36, 22 W. R. 428.

25. A decree cannot be executed upon the footing of a subsequent arrangement (*kistbundee*) which makes a substantial alteration in the terms of the decree.—23 W. R. 129. *See also* 24 W. R. 205.

26. A petition put into Court by a judgment-debtor to pay the — due under a *kistbundee*, may be considered as evidence of a new contract formally entered into with the decree-holder and declared in Court.—23 W. R. 465.

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1. Where a policy has been effected on a gross quantity of sugar, the fact that that sugar has been described in the margin of the policy as being in different lots containing different species of sugar and being separately priced, does not raise any presumption that a separate — upon each species of sugar was intended by the policy-holder.—1 Hyde 198.

2. Construction of the words "free from particular average" in a marine policy of —.—2 Hyde 74.

3. Sea-worthiness; abandonment; total loss. —2 Hyde 107.

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Interest.

1. Landlord's omission to claim — on each instalment of rent not paid when due, is no waiver of claim to —.—W. R. F. B. 13 (1 Hay 95, Marshall 40).

2. S. 20 Act X of 1859 (providing for payment of — on arrears of rent) is not applicable to a case where the defendant is not a tenant of, and does not pay rent to, the plaintiff, but is a co-sharer by purchase from the plaintiff under an arrangement that, until the completion of a mutation, the defendant should pay through the plaintiff his quota of the Government revenue, and that, after mutation, the relation between the plaintiff and defendant should be an independent one.—W. R. F. B. 47 (1 Hay 346, Marshall 146).

3. A trustee misapplying trust funds is liable to heavy —.—W. R. F. B. 60 (1 Hay 399).

4. — was awarded in a case where plaintiff was held entitled to sue without notice under Reg. V of 1812 for arrears of rent at a certain rate decreed in a former suit.—W. R. F. B. 93.

5. The receipt of rent for 10 years by a zemindar without making any demand for — and without applying any portion of the payments towards the discharge of —, was held to be a waiver of his claim to — by the zemindar.—W. R. F. B. 117 (2 Hay 423, Marshall 394).

6. A landlord cannot be charged with an ordinary rate of — or profit on capital, and also with an allowance for insuring the return of the capital with such extraordinary rate of —.—W. R. F. B. 131.

7. On bond-debt at 12 per cent. after due date, but at stipulated rate up to due date.—S. C. C. 19, 11 W. R. 68, 15 W. R. 284.

The rate of — after due date is in the discretion of the Court.—18 W. R. 322, 25 W. R. 318.

8. Where A agreed to pay B 8Rs. in 2 days for value received, or in default to pay 8 annas a day as —, it was held that the stipulation to pay 8 annas a day as — must be regarded as penalty.—S. C. C. 96.

9. As a general rule, Mofussil Small Cause Courts are not bound to allow — upon their decrees.—S. C. C. 104.

10. On a sum awarded for mesne profits may properly be withheld until the date of the decree, since the amount is not ascertained before that date.—1 Hay 181 (Marshall 105).

INTEREST (*continued*).

11. Where a bond did not stipulate for —, and the debt was payable by a certain day, but no demand was made for payment, the Court declined to allow — from date of bond but only from date of suit.—1 Hay 198.

12. Where neither the bond nor the decree contained any provision as to — and for several years the decree-holder never asserted his right to receive it, the decree-executioner who lately acquired his rights by purchase was held not entitled to — from the period of the execution of the bond. —1 Hay 361.

13. Act XXXII of 1839 has not the effect of restraining the power of the Court to allow — on payments of revenue made by one co-sharer on behalf of others, notwithstanding no demand of — may have been made before suit.—1 Hay 500 (Marshall 239). *See also* 17 W. R. 179, 19 W. R. 98.

14. — was disallowed on a debt before the institution of the creditor's suit, as he was at liberty to sue for it at any time and the defendants were therefore not bound to pay for his forbearance or neglect.—1 Hay 508.

15. — was allowed from the date of suit, and not from the date of the decree, upon a sum of money in deposit in the judicial treasury.—2 Hay 144.

16. — can only be allowed upon an ascertained right and therefore upon *wasilat* when it has been definitively declared. —2 Hay 212. *See also* Mesne Profits 16.

17. Under s. 20 Act X of 1859, a Court is not bound to give —.—2 Hay 286 (Marshall 278). *See also* Sev. 138, 3 R. J. P. J. 154, 1 W. R. 154 (3 R. J. P. J. 222).

18. Where no effectual demand for money is made prior to the institution of a suit for the recovery of it, plaintiff's first demand must be taken to be when notice of suit reached defendant; and if defendant does not then exonerate himself from the charge of delay by immediate payment, he is liable to — from the date of suit.—2 Hay 471.

19. Where by the terms of a contract money is to bear —, — is as much payable by virtue of the contract as the principal, and a Court has no power in such a case to withhold —.—2 Hay 644 (Marshall 544). *See also* 6 W. R. 254.

20. — is legally payable only on a fixed demand or an ascertained sum.—Sev. 4.

21. Where a defendant successfully pleads a set-off, it is inequitable to allow plaintiff — on his credits and to disallow — to defendant on his credits.—Sev. 48.

22. — awarded in this case from the date of the suit for mesne profits.—Sev. 95.

23. Usually — upon mesne profits is awarded from the date of the decree fixing the amount, or from the date of the ascertainment after local enquiry of such amount. But where plaintiff claimed a fixed sum which the Lower Court awarded in full, and the Appellate Court amended that award to a certain extent, — was awarded on the amended amount from the date of the latter Court's decree to date of realization.—Sev. 826.

24. — at the stipulated rate, no matter how usurious, will be awarded down to decree. The rate at which subsequent — is to be awarded is entirely in the Court's discretion. If a plaintiff has contracted to receive — at 12 per cent. only, that rate will be carried down to decree; but should he have contracted for a higher rate, 6 per cent. only will be allowed.—2 Hyde 106.

25. A suit is maintainable by decree-holders for — from a third party who ineffectually claimed money attached by them in execution, for the time they were kept out of the money.—W. R. Sp. 174.

26. Where a note of hand promises repayment with — at a given rate, without stating either *per mensem* or *per annum*, it must be construed with reference to previous transactions between the parties and by custom. — W. R. Sp. 379 (L. R. 152).

27. — not allowed before decree when principal sum had never been ascertained before decree.—W. R. Sp. (Act X), 121.

28. Held, with reference to the circumstances of this case, that there was no such neglect on the part of the decree-holder in executing his decree, as to justify the amount of — claimable under the decree being limited to the original sum due as principal.—W. R. Sp., Mis., 32 (L. R. 106).

29. Where a decree of the Privy Council does not give —, the Court executing such decree has no power to allow —.—W. R. Sp., Mis., 37; 21 W. R. 195.

30. Act XXXII of 1839 is not applicable to opium-wagers but only to debts certain in time and amount.—(P. C.) 4 W. R., P. C., 8 (P. C. R. 357).

31. *Quære.* Whether the discretion of the Court in allowing or refusing — in cases within the above Act, is liable to review or appeal.—*Ib.*

32. Where — was disallowed by the Privy Council.—(P. C.) 2 W. R., P. C., 43 (P. C. R. 409).

33. Where rate of — was altered by the Privy Council. —(P. C.) 4 W. R., P. C., 1 (P. C. R. 592).

34. Where a contract of loan stipulated that the legally demandable rate of — should be 5 per cent., it was held that a claim by the creditor of — at 8 per cent. founded upon a bare promise of the debtor to pay 8 per cent., or upon the fact that the debtor had an account voluntarily debited to himself with 8 per cent. in lieu of 5 per cent., could not be maintained in law for want of consideration amounting merely to *nudum pactum*.—(P. C.) 6 W. R., P. C., 59 (P. C. R. 654).

35. Question of — not to be raised on remand in a case in which liability for — has been recognized and acted on. —1 W. R. 135.

36. — ought not to be given before date of ascertainment of principal.—1 W. R. 310.

37. Rectification of error in calculation of — may be applied for by the purchaser of a decree.—1 W. R., Mis., 15.

38. What is awarded as — on the amount due at the time of decree, even though that amount consists of the principal sum due and on —, is not compound —.—*Ib.*

39. Where rents are withheld, the defaulter is liable to pay — whether provided for in the pottah or not.—2 W. R. (Act X) 68, 96.

40. Act VI of 1862 (B. C.) does not alter or affect the discretionary power of the Court under s. 20 Act X of 1859 to award — or costs.—2 W. R. (Act X) 88 (4 R. J. P. J. 204).

42. — may be claimed on the — of Government promissory notes withheld by another.—3 W. R. 147.

43. In the case of money under attachment with the Collector and invested by him in 4 per cent. Government promissory notes, the difference between that and legal — is only claimable from the date of release from attachment. —3 W. R. 228.

44. The attachment of a decree does not deprive the decree-holder of the — to which he has been declared entitled.—3 W. R., Mis., 10.

45. S. 6 Reg. XV of 1793 does not apply to a suit instituted after the passing of Act XXVIII of 1855. Even under the former law, the Courts allowed — in excess of principal where the — had accumulated owing otherwise than to procrastination on the part of the creditor.—5 W. R. 51.

46. In an order granting — to the decree-holder, want of notice to the judgment-debtor is an irregularity which vitiates all the processes issued in furtherance of such order. —5 W. R. 187.

47. A judgment-debtor who, in consideration of time being allowed him, promised in open Court, through his vakeel, to pay — to his creditor although the decree did not specifically award —, was held bound by that promise.—5 W. R., Mis., 1.

48. As long as a decree-holder does not incur the loss of right by limitation, he cannot be deprived of the — which his decree gave him, on the ground of his dilatoriness in taking out execution.—5 W. R., Mis., 71.

49. — runs on sums decreed as a matter of course, unless a specific order is recorded to the contrary.—5 W. R., Mis., 12: 6 W. R., Mis., 26. *See contra* 5 W. R., Mis., 28, and 53 *post*.

50. S. 6 Reg. XV of 1793 (prohibiting award of — in excess of principal) applies only to sums decreed, and not to — which has accumulated through the neglect of the judgment-debtor to pay.—5 W. R., Mis., 22.

The Reg. applied only to accumulations of — in excess of the principal at the time of suit.—(P. C.) *Luchmeswar Sing* v. *Synd Lootf Ali Khan* 8 B. L. R.

51. A suit will not lie for — in respect of money deposited under a decree subsequently reversed on appeal.—6 W. R. 285.

52. Cannot legally be awarded prior to suit in cases governed by Act XXXII of 1839.—6 W. R. 288.

53. Where a decree is silent as to —, the Court executing

Interest (*continued*).

the decree has no power to award —.—(F. B.) 6 W. R., Mis., 109. *See also* 9 W. R. 369, 10 W. R. 60, 15 W. R. 335, 20 W. R. 477, 22 W. R. 533.

So also as to a decree of the Privy Council.—16 W. R. 302, 21 W. R. 147.

The principle of the above ruling applies as much to — upon costs as to — upon mesne profits.—15 W. R. 415.

54. A decree-holder who gives up a portion of his claim and verbally agrees to receive the remainder by instalments, does not thereby give up — to which he is entitled under the decree.—6 W. R., Mis., 121.

55. Nor does his refusal to receive only a part of what is due to him under the decree, deprive him of his right to —. 7 W. R. 20. *But see* 71 *post*.

56. Where a Court in execution in 1857 gave — not awarded in the decree, the High Court declined to interfere in 1867.—7 W. R. 37.

57. Where, under s. 6 Reg. XV of 1793, — not in excess of principal was awarded, though the Reg. was repealed when the suit was brought, yet, looking to the time when the contract was made, plaintiff was held not entitled to any further — before suit.—7 W. R. 172.

58. — on mesne profits may be allowed year by year during period of dispossession.—7 W. R. 173. *But see* 22 W. R. 484.

59. Where a decree does not specify the rate of —, no higher rate than 12 per cent. should be allowed.—7 W. R. 375.

60. Where the Lower Court gave a decree for 911Rs. with —, and the Sudder Court modified that decree by giving 1353Rs.,—*Held* that the Sudder Court must have meant to give that sum with — also.—8 W. R. 163.

61. A lessor who, notwithstanding Lower Court's decree against him, compels payment of rents which he had agreed to deduct in case his special appeal was unsuccessful, must pay — if the result of the litigation is against him.—9 W. R. 272.

62. Where a decree of a Lower Appellate Court awarding — from date of suit was affirmed in special appeal, the decree-holder was held entitled to — from the date allowed in the decree, notwithstanding a subsequent declaration of the Judge of the Lower Court that he meant to allow — from the date of his own decision.—9 W. R. 386.

63. — may be decreed with arrears of rent, but not upon instalments unless so previously agreed upon.—9 W. R. 495.

64. Where a bond is enforced as a decree under s. 52 Act XVI of 1864, no — is to be allowed on it, if the bond does not provide for — after the date on which the debt was payable.—10 W. R. 174.

But if the bond provides for — between the date upon which the bond fell due and the date on which enforcement under s. 53 Act XX of 1866 was applied for, the bond ought to be construed strictly against the judgment-debtor.—16 W. R. 297.

65. A decree for — upon mesne profits from the date on which they are ascertained, was held to mean the date of ascertainment by the Court and not by an Ameen.—10 W. R. 391.

66. Where, in a previous suit on a bond (which suit was lost on account of want of jurisdiction), the plaintiff sued for a specific sum and for — as from a certain date, he was declared, in a subsequent suit instituted by him on the same bond, entitled to — on the bond, only from the date from which he sued for it in the first suit to the date of the present decree.—(P. C.) 10 W. R., P. C., 55.

67. Where a decree-holder under a misconception asks to receive less — than he is entitled to, and the judgment-debtor does not pay in the money, the decree-holder may execute the original decree.—11 W. R. 29.

68. How awardable to persons who purchase debts and lawsuits and after purchase allow the amount to remain outstanding without endeavouring to realize their claims.—11 W. R. 125.

69. A Court may give — at the rate specified in a bond up to date of decree, after which the decree-holder will recover such — as it is the practice of the Court to allow on debts having the security of the decree.—11 W. R. 455. *See also* 23 W. R. 309.

70. *Quære.* Whether by Hindoo law it is legal to contract for — at the rate of 500Rs. for the loan of 700Rs. for one month; and whether Act XXVIII of 1855 affects or repeals the Hindoo or Mahomedan law as to —.—12 W. R., O. J., 9.

The Mahomedan law on the subject of usury has been repealed by Act XXVIII.—14 W. R. 308.

Quære. Whether there is any legal restriction on the rate of — since the passing of Act XXVIII of 1855.—20 W. R. 317.

The rule of Hindoo law that more — than the principal cannot be recovered, has not been abrogated by Act XXVIII of 1855 in the case of Hindoos in the Presidency towns, but is not applicable to the Mofussil Courts which are governed by s. 24 Act VI of 1871.—24 W. R. 106.

71. It is within the discretion of a Court to receive a deposit not equal to the full amount due to a decree-holder; and where the latter has not expressly declared that he will not receive a part-payment, the judgment-debtor should not be compelled to pay — afterwards.—12 W. R. 50.

72. Where a plaintiff obtains a decree with costs and — upon the costs, and the defendant is declared entitled to a set-off on account of costs, the — should be calculated on the amount due to plaintiff after deduction of the set-off.—13 W. R. 138.

73. If the purchase-money of a *putnee* is in deposit in the Collectorate and the zemindar judgment-debtor does not assist the judgment-creditor in recovering his dues, the former is liable for — on the entire sum.—13 W. R. 161.

74. The grant of — is in every case a matter for the judicial determination of the Court which passes the decree.—14 W. R. 62.

75. In the absence of accounts or other evidence to show the profits of a business, — was awarded at 12 per cent. per annum.—14 W. R. 87.

76. In a suit to recover money lent, where the stipulated terms of — are below the terms on which money is lent in India, and the penalty is but the ordinary rate, the plaintiff is entitled to a decree at the higher rate.—14 W. R. 486. *See* 19 W. R. 271.

77. Where a smaller sum is secured by a larger sum, that larger sum may be looked upon as a penalty.—14 W. R. 437 (*foot-note*). *See* 19 W. R. 271.

78. Where no rate of — was agreed upon by the parties after the expiration of 15 days, the Court was held to have the power, under s. 2 Act XXVIII of 1855 and s. 10 Act XXIII of 1861, to fix a reasonable rate of — subsequent to that time.—14 W. R. 450.

79. — was held rightly awarded on excess payment under a decree executed during the pending of a special appeal and which was ordered in special appeal to be refunded.—15 W. R. 74, 20 W. R. 49.

80. Where a bond stipulated for payment of — at 24 per cent. per annum until liquidation of whole debt (principal and —) and for the enforcement of the bond as a registered deed if the time fixed for the repayment of the money borrowed were exceeded.—*Held* that the rate of — was not a question of discretion but must be paid at the rate stipulated.—15 W. R. 396.

81. A decree of the Privy Council ordering possession with mesne profits but without —, does not interfere with the power of the Judge who executes it, to award — under s. 10 Act XXIII of 1861 on the aggregate sum adjudged and costs from date of decree to date of payment.—15 W. R. 169.

82. In a suit relating to balance of accounts, probabilities are not sufficient to support a decree for — in the absence of a contract for —.—16 W. R. 148.

83. Where a defendant, though invited to do so by an injunction in another suit, refused to deposit in Court the money admittedly due under the bond now sued for, he was held liable to pay — from the date of that injunction.—16 W. R. 297.

84. Whether — on decretal money is payable up to the date that it was deposited in Court by the judgment-debtor or up to the date on which the decree-holder applied to get it from the Court, will depend on whether the decree-holder had any notice of the money being so deposited to his credit.—16 W. R. 304.

85. — was disallowed on an item of Government land revenue when the payment of it was neither expressly stipulated nor contemplated by the parties.—17 W. R. 71.

86. Where a decree of the High Court found a certain sum due on account of a loan transaction and went on to direct payment of costs and — thereon, the Lower Court was held to be right in its view that the decree of the High

INTEREST (*continued*).

Court made no provision for — on the sum decreed on account of the loan transaction.—17 W. R. 175.

87. Although the common practice is to make — payable from the date on which the mesne profits are assessed, yet there is no rule of law by which a party is debarred from recovering mesne profits with — from an anterior date.—17 W. R. 228.

88. Where parties stipulate that, on the borrower's failure to repay with — at a certain rate on a certain day, the lender is to be entitled to a different (*i.e.* a higher) rate of —, the Court is bound to give effect to such stipulation which is not a penalty.—17 W. R. 373.

Such stipulation is not a penalty but liquidated damages, for it provides not an unvarying lump sum, but a sum increasing with the time the lender is kept out of his money.—22 W. R. 223.

89. Where the decree did not specify the rate of —, but in calculating the amount due, the Court gave 12 per cent. and that was the usual rate, it was held to have been the rate intended.—17 W. R. 414.

90. A Judge has no discretion to allow — at a rate below that stipulated in the bond.—17 W. R. 431.

91. Where a decree of the Privy Council gives — but does not clearly specify the rate, the Court should ascertain, if possible, from the other parts of the decree itself, or from other documents read in conjunction with the decree, what rate was intended to be given.—18 W. R. 103.

92. Where the decree gives — upon the principal sum recovered only, but not upon costs, the plaintiff is not entitled to such.—*Ib.*

93. Where a sum found due under an arbitration-award was to be paid in annual instalments, and, if one was in default, the judgment-creditor was entitled to recover upon the whole sum — at the rate of 1 per cent. per mensem (instead of 6 annas), and a default took place after annual kists had been paid for several years,—*Held* that — at 1 per cent. per mensem must be paid on the balance due at the time of the default from the date of the award.—18 W. R. 111.

94. Disallowed in a suit for compensation for use and occupation of demised lands where lessor had known that the lessees were nominally such and their husbands the beneficial lessees.—18 W. R. 132.

95. Where a bond provided for the payment of — from the date of the bond on failure of payment of the principal on a certain date, and the decree awarded "the entire sum covered by the bond,"—*Held* that the decree meant the principal together with the — accruing thereon. —18 W. R. 277.

96. The compensation due to plaintiff for the delay between the date of filing of plaint and the date when the decree may be expected to be satisfied, is best estimated by a uniform rate of — upon the total amount decreed from date of decree.—19 W. R. 34.

97. How the Privy Council construed the following words in a previous order passed by them—"the plaintiff is to have judgment for his moiety with — at the full legal rate."—(P. C.) 19 W. R. 41.

98. Where a decree awarded a certain sum which was calculated in the schedule *plus* costs and —, the Court executing was held to have committed an error in altering the amount by reducing the rate of — during the pendency of the suit.—19 W. R. 46.

99. Where on a mortgage-bond — at 8 annas per cent. per mensem is agreed to be paid, and in default of payment of the principal within three years the — chargeable is to be 4 per cent. per mensem.—*Held* that s. 2 Act XXVIII of 1855 does not affect the question of penalty, but leaves it to the Court to decide whether the 4 per cent. was agreed upon as — or intended as a penalty.—19 W. R. 271, 22 W. R. 473. *See* 20 W. R. 317, 21 W. R. 352.

100. S. 21 Act VIII of 1869 (B. C.) does not impose upon the tenant an absolute obligation to pay 12 per cent. — when the rent is not paid.—20 W. R. 128.

101. If a decree-holder means to claim his 24 per cent. — (the penalty for non-payment of the instalments at the time fixed) as soon as default is made in payment of an instalment, he must, when the money is brought to him, tell the judgment-debtor that he is going to do so. —20 W. R. 292.

102. A contract to pay — at 75 per cent. as damages for breach of contract to give a security for a loan, was held to be one which the Courts could enforce.—20 W. R. 317, 21 W. R. 352.

103. Under a specially registered bond under Act XX of 1866, the creditor may have a decree for the amount including — up to the date of decree. If he intends to secure — at the rate stipulated after suit and decree, it is not enough to insert the phrase "date of realization," as this phrase must be held controlled by other parts of the agreement.—21 W. R. 140.

104. In an action brought for — upon some debentures of the Port Canning Municipality which were given to the Land Company convertible into land, it appeared that the Company had selected lots which amounted to only a part of the whole amount of their debentures, and that the Commissioners required them to select the other lots and expressly gave them notice that they would not be liable for —, whereupon the Company proposed to take certain lots not in accordance with the contract, the lots selected being of more value than the debentures,—*Held* that the non-acceptance of this proposal as to the additional lots could not affect the previous agreement to exchange debentures then held for equivalent lots, and that such previous agreement had been made involving quit-rent which extinguished the —.—(P. C.) 21 W. R. 315.

105. Where an order of the Privy Council awarded costs incurred in India including charges for translation and printing,—*Held* that the costs should carry — at 6 per cent.—21 W. R. 411.

106. Even where a stipulation for — is intended to operate as a penalty, it is incumbent on the Court to consider what amount of money would properly measure the damages consequent on the default.—22 W. R. 223.

107. In making an account of — in the execution of decrees, the balance of — should not be added to the principal so as to produce *compound* —.—22 W. R. 525.

108. An application for execution having been refused as barred by lapse of time, the applicant appealed to the High Court which made an order for the issue of execution with this qualification that, as the decree did not give —, the judgment-creditor could not have —,—*Held* that if the judgment-creditor was taken at a disadvantage by that order, he could apply for a review, but the order could not be set aside by a miscellaneous appeal after a second application in the same matter.—22 W. R. 534.

109. The Court refused to allow — at 75 per cent. in a case where, defendant's property being about to be sold by plaintiff in execution of a decree for more than 3000Rs., defendant was made to appear to borrow money at that rate, defendant not deriving any other benefit than that the money was applied in part payment of the debt, and plaintiff not binding himself to stay execution.—23 W. R. 49.

110. A Court, in passing judgment according to an award of arbitrators, has no power, under s. 10 Act XXIII of 1861, to decree — which the arbitrators have not awarded. —23 W. R. 105.

111. An agent retaining his principal's money, which he has not been required to pay, should not ordinarily be required to pay — ; but if his conduct has been fraudulent, he should be charged with —.—23 W. R. 325.

112. In suits for arrears of rent, a Court of justice is not bound in every instance to award — at 12 per cent. as specified in s. 21 Act VIII of 1869 (B. C.), but may either disallow — altogether or reduce the rate according to the circumstances of each case.—23 W. R. 463.

113. Where a plaintiff sought to recover more than was actually due, and it did not appear that defendant would have refused payment if the sum actually due had been demanded, the Court reduced the rate of — to 6 per cent. —*Ib.*

114. In a suit to recover (with —) money which had been advanced as part of the consideration for the purchase of land under a contract which defendant broke, the Court, in decreeing the claim, awarded — from the time when the demand of payment was made, *i.e.* from the date the suit was instituted.—24 W. R. 457.

115. There is no rule of law that, upon a contract for the payment of money on a day certain with — at a fixed rate down to that day, a further contract for the continuance of the same rate of — is to be implied. Accord-

INTEREST (*continued*).

ingly — was awarded up to the date on which a bond fell due at the rate (18 per cent.) mentioned in the bond, but at 6 per cent. from that date.—25 W. R. 189.

116. Where a stipulation for *compound* — is included in a bond, the compound — is not a penalty but a matter of contract, and can be enforced. —25 W. R. 323.

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Privy Council 11, 23, 77.
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Re-sale 5.
Sale 222.
Securities (Government) 2.
Stamp Duty 80.

Interlocutory Order.

It is the duty of a Court to pass a distinct order upon every petition or application presented to it in connection with any suit pending before it, instead of simply directing the petition or application to be filed with the record.—5 W. R. 109, 222; 7 W. R. 193; 8 W. R. 107.

So also in criminal trials.—9 W. R., Cr., 3.

See **Appeal 15, 38, 64*a*, 87, 141, 142, 162.**
Arbitration 13, 65.
Limitation (Reg. III of 1793 s. 14) 9.
Mortgage 93.
Privy Council 22.
Remand 14, 22.
Withdrawal of Suit or Appeal 2.
Witness 22.

Intermediate Holder.

See **Middlemen.**

Interpleader Suit.

Where B's goods held in pledge by C are seized by a bailiff, C is entitled to maintain an —.—14 W. R. 303.

Intervenor.

1. Where the Court of first instance did not make an — a defendant under s. 73 Act VIII of 1859 but allowed him to file his proofs and then rejected his claim, the — was held entitled to appeal notwithstanding the want of a regular and formal order constituting him a defendant; and the Lower Appellate Court was held competent, under s. 353, to decide the case without remanding it, if the evidence on the record appeared to him sufficient to enable him to pronounce a satisfactory judgment.—2 Hay 491.

2. In a suit by a Dur-putneedar for arrears of rent, a third party alleging himself to be the Se-putneedar having intervened under s. 77 Act X of 1859, the Court should not go into the question of title but determine which party is in possession of the rent up to the commencement of the suit.—1 R. J. P. J. 46 (Sev. 11)

3. In a suit for a kuboolent an — can appear and be heard under s. 77 Act X of 1859. —1 R. J. P. J. 47 (Sev. 18).

4. If an — shows conclusively by a final decree of the Civil Court that the right to receive rents has been decided in his favor and against the plaintiff, the Collector cannot give plaintiff a decree notwithstanding he might have been collecting the rents. But if the effect of the decree of the Civil Court be a matter of proof, the Collector should enquire, as directed by s. 77 Act X of 1859, into the fact of previous enjoyment of the rents.—1 R. J. P. J. 49 (Sev. 20). *See* 11 W. R. 90, 13 W. R. 117.

5. Under s. 77 the Court should only enquire as to whether the — or the plaintiff has been in receipt of the rents of the disputed share and not go into the question of title, but reserve such question to be determined in a regular suit.—1 R. J. P. J. 95; 4 W. R. (Act X) 34; 5 W. R. (Act X) 26; 8 W. R. 367; 10 W. R. 433; 12 W. R. 153, 157.

Even when plaintiff holds a certificate under Act XXVII of 1860.—13 W. R. 356.

6. An — cannot be heard in a suit brought by a tenant under cl. 6 s. 23 Act X of 1859 to recover possession of his tenure of which he has been illegally dispossessed by defendant.—1 R. J. P. J. 99 (Sev. 50*b*).

7. In a suit for rent of 8 annas' share of an estate, where an — claimed 6 annas of the rent, the Judge, in finding in favor of the —, should not have dismissed the whole claim but decided as to the remaining 2 annas.—1 R. J. P. J. 113 (Sev. 136*oo*).

8. Where the Lower Court did not by mistake make an — a defendant under s. 73 Act VIII of 1859, the High Court held that he had no *locus standi* to appeal against a judgment to which he was no party; but that, should the property in his *bonâ fide* possession be sought to be made available to satisfy the decree in this suit, he could prefer his claim to it as pointed out by s. 246 and have his rights decided.—Sev. 51.

9. The only ground on which an — can be heard under s. 77 Act X of 1859 is that he or the person through whom he claims has been in the receipt and enjoyment of the rents paid by defendants, and not that he had purchased the land in dispute at a sale in execution of a decree and had become entitled to the rents.—Sev. 128.

10. In a suit for arrears of rent against a tenant, an — claiming to have purchased part of the tenure from the tenant, cannot be made a party to the suit, but the decree should be against the tenant only for the arrear proved to be due from him.—3 R. J. P. J. 129.

11. An objector who does not claim to be in possession "on his own account or on account of some person other than the defendant," but intervenes as holding a *bonâ fide* title derived from the defendant, is not entitled to be heard under s. 230 Act VIII of 1859.—W. R. Sp. 381.

12. When the right to receive the rent is not disputed, the event upon which s. 77 Act X of 1859 gives a third party the right to intervene, does not arise.—W. R. Sp. (Act X) 72.

13. According to s. 77, when a third party intervenes, the only question is whether the plaintiff or the — is in the actual receipt of the rent.—W. R. Sp. (Act X) 73; 1 W. R. 113, 193.

14. S. 230 Act VIII of 1859 is applicable to the case of a person who, though personally the defendant in the original suit, was legally other than the defendant as regards the particular portion of land in dispute in execution.—W. R. Sp., Mis., 18.

15. Where an Ameen was appointed to measure and give possession of land in execution of a decree, the one month allowed for preferring a claim under that section must be

INTERVENOR (*continued*).

calculated from the date when the Ameen gave over possession and not from the date of his final report.—*Ib.*

16. A party whose application to intervene in a suit has been refused, is not bound by the decree in that suit.—(P. C.) 5 W. R., P. C., 63 (P. C. R. 631). *See* 14 W. R. 401.

17. The claims of an — under s. 77 Act X need not be gone into if plaintiff's suit is dismissed.—1 W. R. 44.

18. When a defendant in a suit for rent refuses to pay on the ground that a third party claimed the land, the — should be referred to a Civil Court.—1 W. R. 91.

19. Not admissible in a dispute between two purchasers as to right and possession.—1 W. R. 207.

20. In a suit for rent in which the defendant admits tenancy and a third person intervenes, the only question between plaintiff and — is as to actual receipt of rent up to time of suit.—1 W. R. 289.

21. When defendant admits his liability to pay the amount of rent demanded, the fact that another person as ryot has executed a kubooleut to a third person for the same land affords no ground for an intervention.—1 W. R. 308 (3 R. J. P. J. 342). *See* 12 W. R. 81.

22. S. 77 Act X only applies to the case of an — who claims a present right to receive rent supported by a prior actual receipt. The mere existence of a Civil Court's decree, adverse to the rights of plaintiff, does not bar his claim.—1 W. R. 331 (3 R. J. P. J. 347). *See* 11 W. R. 90.

23. Not admissible in a suit under s. 21 Act X.—4 R. J. P. J. 156.

24. In a suit for rent against a ryot by the under-tenant of an ijaradar who had been ejected by due course of law, in which the zemindar intervened, neither the ijaradar nor his tenant were considered *bonâ fide* in the receipt and enjoyment of rent under s. 77 Act X.—2 W. R. (Act X) 67.

25. An — claiming to be the real tenant should be heard if the defendant does not appear.—4 R. J. P. J. 461. *But see* 51 *post.*

26. In a suit brought by an — under s. 230 Act VIII, the Court should confine itself to the questions arising under the words of the section, instead of dismissing the suit on the ground that the property was then (though not at the time of the original decree) out of the jurisdiction.—3 W. R. 4.

27. To entitle a person to come in under s. 230 Act VIII by petition, and to have his case tried in like manner as if he had paid full stamp duty on a regular plaint, he must prove that he was in possession of the land in suit, and was dispossessed by another party alleging the land to form part of land decreed to him.—3 W. R. 201. *See also* 8 W. R. 8.

28. An — under s. 77 Act X is not estopped by an award in butwarra.—3 W. R. (Act X) 11 (4 R. J. P. J. 392).

29. An intervention by a lessee or tenant is not the intervention contemplated by s. 77 Act X.—3 W. R. (Act X) 16 (4 R. J. P. J. 397), 10 W. R. 13. *See* 34, 38, 39 *post.*

30. In a suit for a kubooleut, an intervenor under s. 77 Act X can only show receipt of rent, but cannot raise a question of title.—3 W. R. (Act X) 25. *See also* 8 W. R. 516.

31. If a Deputy Collector decides a case under s. 77 Act X upon the title of the parties, the appeal lies to the Judge; and the Judge having admitted the appeal, should, under s. 353 Act VIII of 1859, decide the whole case himself upon the proper issue if the evidence is complete.—3 W. R. (Act X) 27 (4 R. J. P. J. 444), 154; 4 W. R. (Act X) 34, 5 W. R. (Act X) 56, 6 W. R. (Act X) 1, 7 W. R. 25, 10 W. R. 67. *See also* Appeal 117.

32. A decree for possession without actual possession cannot avail an — under s. 77 Act X.—3 W. R. (Act X) 152.

33. Effect of non-intervention under s. 106 Act X.—*See* Under Tenures 5.

34. The right of third parties to intervene is not restricted by Act X until a tenure is put up for sale.—3 W. R. (Act X) 166. *But see* 9 W. R. 519.

35. Where an — claims a share of attached property, the Court should define the rights of the debtor and of the —; if it does not, there is no decision under s. 246 Act VIII, and the — is not obliged to sue within the year.—4 W. R. 85.

36. An intervention by a minor, and not through his guardian or some friend, is not allowable.—4 W. R. 106.

37. Effect of a decision under s. 77 (as regards finality) where no suit to determine the question of title is instituted within a year.—4 W. R. (Act X) 21.

38. S. 77 Act X does not permit a stranger to intervene; the — must claim for himself, by some title direct or derivative, that which plaintiff is seeking.—4 W. R. (Act X) 29.

39. Third parties may intervene in a suit for rent, otherwise than under s. 77 Act X, when their rights and interests are manifestly put in jeopardy.—4 W. R. (Act X) 30. *But see* 8 W. R. 78, 497; 9 W. R. 519, 10 W. R. 54. *And see* 51 *post.*

40. In a suit for a kubooleut, the decree of a Civil Court adjudging the land to plaintiff cannot extinguish the right of an — (not a party to the decree) under s. 77 Act X.—5 W. R. (Act X) 1.

41. In a suit for rent, the mere failure of an — under s. 77 Act X to establish his claim, does not entitle plaintiff to a decree.—5 W. R. (Act X) 26. *See* 10 W. R. 97, 13 W. R. 259. *But see* 10 W. R. 81.

42. A party who may fail under s. 77 to show receipt of rent, may yet have a good right and title to possession, capable of being declared by a suit in a Civil Court.—5 W. R. (Act X) 85. *But see* 11 W. R. 331.

43. Before a claim can be investigated under s. 246 Act VIII, it is necessary to ascertain whether the proprietary title claimed by the — arose through a right originating before or after the attachment made by the decree-holder.—5 W. R., Mis., 28.

44. In a suit for possession by an auction-purchaser at a sale in execution, an intervenor cannot question the legality of the sale.—6 W. R. 169.

45. The words "the actual receipt and enjoyment of the rent" in the second part of s. 77 cannot mean the actual receipt irrespectively of the question of *bona fides* alluded to in the first part of the section.—7 W. R. 85, 8 W. R. 493, 9 W. R. 305, 10 W. R. 67, 11 W. R. 90, 371. *See* 10 W. R. 215.

46. Where the Appellate Court confines its decree for possession to the original defendant, but awards costs against an — made co-defendant by the first Court, the — continues a defendant and can appeal under s. 11 Act XXIII of 1861 and need not come in under s. 230 Act VIII.—8 W. R. 114.

47. Intervention by a farmer in a suit for rent.—10 W. R. 110.

48. An expired decree (*i.e.* one not executed within the time allowed by law) declaring plaintiff's title, is no evidence against an — under s. 77 Act X.—10 W. R. 215. (*over-ruled by F. B.*) 23 W. R. 128.

49. S. 77 Act X does not allow an — to set up an allegation of receipt of rent against a recent declaration of title.—10 W. R. 320.

50. A third party who has given a farm of her share of the estate to defendant, cannot appear as an — in a suit for rent.—10 W. R. 331.

51. In a suit for arrears of rent at an enhanced rate, an — claiming to be the real tenant has no right to be made a defendant.—(F. B.) 11 W. R. F. B. 23.

52. The application of an — under s. 77 Act X should not be rejected merely because it does not contain the words "that he claimed to receive and enjoy the rent."—11 W. R. 14.

53. Where both parties agree that the questions of the actual receipt of rent by the — shall depend on whether the land is part of his estate, the Lower Appellate Court should decide whether the first Court is right in its finding.—11 W. R. 20.

54. In a suit for rent by a dur-mokurrureeadar, where his right is contested by a third party under s. 77 Act X on the ground that it is extinguished under s. 16 Act VIII of 1865 (B. C.), the issues to be framed would be in the first instance as between the plaintiff and the —.—11 W. R. 563.

55. In order to get rid of the effect of a Collector's decision in favor of an — under s. 77 Act X, the party entitled must bring a suit to establish his title.—11 W. R. 573.

56. Reading s. 21 Act VI of 1862 (B. C.) and s. 77 Act X together, an — in a suit for measurement is entitled to have his claim determined.—12 W. R. 322.

57. Where a suit to recover possession is decreed without prejudice to the rights of an —, the —, having been a party to the decree, has no remedy under s. 230 Act VIII.—12 W. R. 475.

INTERVENOR (*continued*).

58. Where in a suit for possession and mesne profits an — had her own name substituted in the decree for that of the original defendant, she was held responsible for mesne profits and costs.—13 W. R. 81.

59. Where an — was made a defendant and a decree was passed in favor of plaintiff with costs payable by the original defendants,—*Held* that, in the absence of any agreement, a suit for contribution would not lie against the —.—14 W. R. 70.

60. A Judge has no jurisdiction to try the same objector's claim under s. 246 Act VIII a second time as against the same attachment, or to re-open a question finally decided on the former occasion.—14 W. R. 144.

61. The title of the objector as compared with that of the debtor, is not a point for adjudication under s. 246.—*Ib.* *See also* 21 W. R. 230.

62. Where a party complains under s. 230 Act VIII of having been dispossessed in execution of a decree to which he was not a party, and there are reasonable grounds for thinking that his claim is *bonâ fide*, it is the duty of the Court to treat the case as a regular suit between the claimant as plaintiff and the decree-holder and judgment-debtor as defendants.—15 W. R. 209.

63. Where the application of an — under s. 246 Act VIII is dismissed on default, the order of dismissal is of equal force with a finding on the merits after investigation.—15 W. R. 311.

64. Directly the name of an — has been struck off on the ground that he has no interest in the case, all the evidence he has put in should be removed from the record.—15 W. R. 572.

64*a*. It is not necessary to admit an — in a rent suit under Act VIII of 1869 (B. C.) if his interest cannot be injured by a decree thereon.—16 W. R. 132. 23 W. R. 168.

65. When an application is made by a party on the ground that he was in possession and that he has been dispossessed in execution of a decree in a suit in which he was not a party, the proper order to be made under s. 230 Act VIII in the first instance is to examine him.—16 W. R. 288.

66. In a suit for rent of a share of a mehal alleged by plaintiff to have fallen to him under a *butwarra*, where a third party appears as —, the Court should try whether, up to the time of the *butwarra*, the ryot defendant held lands and attorned to the joint sharers of the mehal, and whether the — was at any time up to date of suit in the *bonâ fide* receipt and enjoyment of the rent sued for.—17 W. R. 143.

67. A party is not bound to intervene, because he cannot be affected by any decision passed, in a suit brought, not against him, but against certain representatives of his ancestor's vendors.—18 W. R. 314.

68. Persons who choose to buy property in another person's name and allow that person the opportunity of dealing with it as his own, cannot be allowed in equity to intervene in a suit brought by such person for the rent of such property.—18 W. R. 526. 24 W. R. 349. *See* 22 W. R. 440.

69. Where a third party omitted to apply to the Lower Court under s. 230 Act VIII, the High Court was unable to interfere although it thought that the Lower Court should have made some enquiry.—19 W. R. 62.

70. In a suit against a ryot for rent of certain land, where a third party got himself made a party under s. 73 Act VIII, and as between him and plaintiff an issue was raised whether the property formed part of one mouzah or another,—*Held* that this was giving an entirely new scope and character to the suit; and that the remedy of any third party who might have been dispossessed by the proceedings of the other parties lay in a civil suit to recover possession. All issues relating to the — were struck out of the record and the decree was affirmed against the original defendant simply.—20 W. R. 383. *See* 22 W. R. 440. 24 W. R. 357.

71. In a suit for rent where a third party intervenes, the Court does not err in law in going into the question of title where this is necessary in order to decide who has been in the enjoyment of rent.—22 W. R. 440. *See also* 24 W. R. 101.

But the issue to be tried is, who has been in receipt of the rent.—23 W. R. 435.

72. When a claim made by a third party in the course of an execution-proceeding is rejected, the case does not come under s. 11 Act XXIII of 1861, nor under s. 230 Act VIII; but the claimant's proper remedy is to bring a regular suit, or to wait until he is dispossessed, and then to proceed under s. 230.—23 W. R. 270.

73. Where a rent-suit was remanded by the Lower Appellate Court for the trial of certain issues, the first Court was held to have done wrong in admitting certain parties to intervene, whose names had not been registered in the zemindar's sheristah, and who had no right to question in this suit the decree passed against the registered tenants.—24 W. R. 151.

74. An — in a suit for rent has no right to be made a defendant, or to introduce into the suit an entirely new issue, *e.g.* one concerning title between himself and plaintiff; still less is he entitled singly to appeal against the judgment in the case.—24 W. R. 261. *See* 25 W. R. 29.

75. In a suit for rent, an — who claims to have acquired a share of the property from which the rent is claimed, may, at the discretion of the Court, be made a defendant under s. 73 Act VIII.—24 W. R. 350.

76. In a suit for rent in which an — appeared and the Moonsiff raised the question as to who had up to that time been in the actual receipt of rent,—*Held* that the Judge was wrong in appeal in raising the question of title.—24 W. R. 421.

Quære. Is the Moonsiff's procedure in this case the right one, now that s. 77 Act X has been repealed and not re-enacted.—*Ib.*

See Abatement 1.
Appeal 28, 38, 55, 65, 85, 94, 99, 105, 117, 122, 132, 166.
Arbitration 74.
Attached Property 1, 2, 3, 8, 14, 19, 21, 25, 31, 33, 34, 35, 36, 39.
Churs 53.
Declaratory Decree 27.
Default 13.
Ejectment 11.
Enhancement 102, 158.
Evidence 66.
,, (Admissions and Statements) 7.
,, (Estoppel) 87, 88, 97.
Ex-parte Judgment or Decree 15.
House-rent 3.
Income Tax 2.
Interest 25.
Irregularity 17.
Joinder of Parties 9, 11, 14, 18, 20, 21, 24, 27, 28, 33, 34.
Jurisdiction 218, 284, 408, 466.
Kuboolent 52.
Limitation 152.
,, (Act X of 1859) 11, 25, 27.
,, (Act XIV of 1859) 275.
Measurement 13.
Misjoinder 6.
Mortgage 303.
Objection (under s. 348 Act VIII of 1859) 8.
Onus Probandi 37, 93, 111, 166.
Possession 3.
Practice (Appeal) 104.
,, (Execution of Decree) 118.
Privy Council 89.
Registration 2.
Remand 30.
Rent 1, 14, 20, 76.
Res Judicata 31, 32, 87.
Resumption 16.
Right of Appeal 6.
Right of Way 2.
Sale 170.
Special Appeal 48, 124, 184.

Intestate.

See Administration 1.
Illegitimate Child 1.
Roman Catholic 1.
Small Cause Court 21, 44, 45.
Succession 4, 5.

Investigation.

See Jurisdiction 8.
Local Investigation.

Irregularity.

1. The party at whose instance — of trial was caused, cannot complain of it.—(P. C.) 1 W. R., P. C., 51 (P. C. R. 420, Sev. 913).

2. When a judgment-debtor sues to set aside a sale in execution of a decree on the ground of —, the *onus* of proving the — is on him.—2 W. R. 74.

3. The non-issue of notice is not an — that can vitiate a sale.—*Ib.*

4. The mere absence of any formal charge of using insulting language in addition to the charge of criminal trespass, is not such an — as to vitiate the trial.—3 W. R., Cr., 28.

5. Misreception of evidence is a defect or — under ss. 426 and 439 Act XXV of 1861, justifying the quashing of a conviction, unless there has been no failure of justice, or the prisoner has not been prejudiced.—7 W. R., Cr., 7; 13 W. R., Cr., 40.

6. Where a Deputy Magistrate did not draw up a charge in accordance with s. 250 Act XXV of 1861, but gave the accused clearly to understand the nature of the charges made against them, the — was held to fall within s. 439.—10 W. R., Cr., 7.

7. Misjoinder of parties is an objection which does not affect the merits of the case or the jurisdiction of the Court, and is not an error, defect, or — on account of which a decision may be reversed under s. 350 Act VIII.—13 W. R. 175.

Where defect of parties was held to be so.—19 W. R. 428.

8. A Deputy Magistrate was held to have acted irregularly in dismissing a complaint and directing the trial of the complainant under s. 211 Penal Code, without recording his reasons for doing so, and without examining all the witnesses tendered by the complainant, or allowing a reasonable time for the attendance of such of the witnesses as were not present.—13 W. R., Cr., 37. *See also* 16 W. R., Cr., 44.

9. The — in a Judge accepting the verdict of a jury before summing up the evidence on both sides as required by s. 379 Act XXV of 1861, was not interfered with by the High Court acting under s. 439.—14 W. R., Cr., 66.

10. Where a decree makes a party liable who is not liable (*e.g.*, an agent of a corporation and not the corporation itself), the error or — is one affecting the merits within the meaning of s. 350 Act VIII.—15 W. R. 534.

11. In a case under Chap. XIV Act XXV of 1861 in which the accused had full opportunity given him to answer the case which was made against him, the High Court felt itself precluded by s. 426 from interfering with the judgment of the Lower Court, even if it found that there was an — in the proceedings in consequence of the absence of a formal charge.—15 W. R., Cr., 3.

12. Where an accused was charged under certain sections of the Penal Code of an offence committed before the Penal Code came into operation, the error or — was held, with reference to s. 4 Act XVII of 1862 and s. 426 Act XXV of 1861, not sufficient to vitiate the conviction so long as the punishment awarded as under the Penal Code did not exceed that which was the legal penalty for the offence before the Penal Code came into operation.—15 W. R., Cr., 48.

So also where the accused was convicted under s. 49 Act XIV of 1866, instead of under the Penal Code for criminal breach of trust.—17 W. R., Cr., 50.

13. A conviction under certain repealed sections of the Penal Code was not set aside with reference to s. 426 Act XXV of 1861, where no substantial injury was done to the accused.—15 W. R., Cr., 49.

14. The proceedings before a Magistrate preliminary to commitment are not impeachable for — because some of the depositions were taken before the accused persons were brought before him.—17 W. R., Cr., 15.

15. Nor where the — was not objected to by the parties notwithstanding that they had full opportunity of doing so.—17 W. R., Cr., 35.

16. The not examining a complainant and not reducing his examination into writing is not such an — as should be interfered with in a trivial case, unless it appears probable that a fresh investigation would produce a different result. —17 W. R., Cr., 36.

17. Although a decree-holder, seeking to have a 4-anna share attached and sold, made his application in a general way including the entire mouzah, the — was held not material, it being clear that what was intended to be sold and was so understood by the objector, was the right, title, and interest of the judgment-debtor.—18 W. R. 106.

18. A prisoner originally charged with an offence under one section and acquitted of that charge, was committed, on the day following that on which she was acquitted, for trial under another section without any witnesses being examined on the second charge, and without having any opportunity of cross-examining the witnesses on the first charge with respect to the second charge. *Held* that the — was not one which was covered by s. 283 Act X of 1872, and that the prisoner had been prejudiced thereby in her defence.—22 W. R., Cr., 14.

19. The rule in s. 283 Act X of 1872 as to — is intended to extend to all proceedings before Magistrates.—22 W. R., Cr.. 81.

20. The maxim *omnia presumuntur rite esse acta* cannot apply where it is plain that the greatest possible irregularities have occurred.—23 W. R. 367.

21. The omission to comply with prescribed formalities before issuing the summons will not vitiate the proceedings after summons so as to enable a complainant to re-open the case.—23 W. R., Cr., 63.

22. A suit was brought under s. 15 Act XIV of 1859 for possession of *brohmottur* land, but defendant contesting plaintiff's right, the Moonsiff had the suit numbered as a regular suit, taking adequate stamps from the plaintiff. The disputed land was then decreed in favor of plaintiff as lakheraj, and the decree was upheld in appeal. *Held* that the regular procedure for the Moonsiff would have been to require plaintiff to file an entirely fresh plaint upon the proper stamp; but that the — objected to did not affect the decision upon the merits according to s. 350 Act VIII.—24 W. R. 167.

See Adjournment 1.
Appeal 60, 134.
Arbitration 90.
Attached Property 31.
Charge 4.
Criminal Proceedings 6.
Damages 44, 58.
Dismissal of Complaint 1.
Enhancement 48, 79.
Evidence 12.
Ex-parte Judgment or Decree 32.
High Court 109, 133, 142, 159.
Interest 46.
Joinder of Parties 29, 30.
Jurisdiction 219, 487.
Land Dispute 1.
Limitation 76, 193.
,, (Act X of 1859) 6.
,, (Act XIV of 1859) 126.
,, (Execution of Decree) 2.
Mesne Profits 72.
Mortgage 278.
Practice (Appeal) 24, 53.
,, (Attachment) 15, 64.
,, (Criminal Trials) 2, 10, 30, 40, 54, 56.
,, (Execution of Decree) 21, 48, 66, 140.

Irregularity (*continued*).

See Practice (Review) 69.
Sale 14, 41, 42, 46, 53, 59, 60, 68, 85, 86, 87, 88, 89, 90, 92, 99, 120, 132, 133, 138, 141, 143, 147, 148, 173, 175, 187, 217, 219, 226, 237, 240.
,, Law (Act XI of 1859) 30.
Special Appeal 38, 92, 118.
Value of Suit or Appeal 2, 4.
Vendor and Purchaser 2.
Witness 9.

Irrigation.

See Negligence 3.
Water 4, 5, 9, 10, 11, 12.

Islands.

See Churs.

Issues.

1. Where no — had been framed at all but nevertheless it plainly appeared what the question was which was raised by the parties in their pleadings and actually submitted by them to the Court, the judgment upon it was held valid. Observations on the settling of — by Courts of original jurisdiction under the Code of Civil Procedure, and on the duty of an Appellate Court when an objection is made before it that the first Court did not lay down — in a case. —(P. C.) 15 W. R., P. C., 15. *See also* (P. C.) 20 W. R. 377, 22 W. R. 448, 24 W. R. 275.

The substance and not the mere literal wording of the — is to be regarded. If, by inadvertence or other cause, the recorded — do not enable the Court to try the whole case on the merits, an opportunity should be afforded by amendment, and if need be, by adjournment, for the decision of the real points in dispute.—(P. C.) 18 W. R. 81 (*foot-note*). *See also* (F. B.) 21 W. R. 208.

2. Where the Court shortly before decision recorded a proceeding declaring its intention to frame additional — and reserved the actual framing of the — for the time of giving judgment, its procedure was held not to be warranted by s. 141 Act VIII.—15 W. R. 151.

3. Where a Judge was held to have mistaken the principle of judicial determination in taking up a double issue instead of a simple and single one,—*i.e.* instead of putting the issue, "Is the plaintiff's allegation proved?" he placed himself under the necessity of choosing between the plaintiff's story and the defendant's.—23 W. R. 87.

See Appeal 16, 139.
Appellate Court 1, 9, 13, 17.
Attorney and Client 7.
Benamee 22.
Co-defendants 8.
Curator 3.
Dismissal of Suit or Appeal 18.
Evidence (Documentary) 59.
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Jagheers.

1. Sequestration of — granted under s. 34 Reg. XII of 1805 in execution of decree.—W. R. F. B. 85.

2. Reg. I of 1804, and not Reg. I of 1793, applies to the case of a person claiming as an heir to an invalid jagheerdar. —6 W. R. 311.

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See Hindoo Law (Inheritance and Succession) 67.
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Jessore.

See Permanent Settlement 3.
Pre-emption 4.

Jheels.

See Enhancement 28.
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Joinder of Causes of Action.

1. There is no impropriety in a plaintiff claiming in one suit to recover possession of two distinct portions of a property from which he has been dispossessed at different periods and under different circumstances.—1 Hay 555.

2. Work and labor, goods sold, and debt, may be combined in one cause of action on one homogeneous account. —W. R. Sp. 68.

3. Where a village was divided into four separate portions with four different parties, and they were dispossessed under one and the same summary award which demarcated the village as appertaining to defendant's estate, the four parties were held to have a common cause of action, and could sue jointly under s. 8 Act VIII.—2 W. R. 219.

4. There is no misjoinder of causes of action in a suit for

JOINDER OF CAUSES OF ACTION (*continued*).

money contracted to be paid, and for the cancellation of a *kistbundee* and for money deposited on account of that *kistbundee*.—3 W. R. 127.

5. Combined causes of action may be brought in the Court which has jurisdiction to the full extent of such combined causes of action.—*Ib. See also* 7, 8, 16 *post.*

6. The claims of parties setting up different leases from A, may be joined in one suit brought by the purchaser of the estate from A, to set aside their leases and to receive profits misappropriated by them.—4 W. R. 109.

7. A Sudder Ameen may join two causes of action, one of which is for possession of a julkur the value of which is within the cognizance of the Moonsiff, and the other for mesne profits, provided the value of the whole suit is within the jurisdiction of the Sudder Ameen.—6 W. R. 138, 297. *See also* 5 *ante* and 8 *post.*

8. The words "cognizable by the same Court" in s. 8 Act VIII refer to the nature of the suit and not its value. Thus a Principal Sudder Ameen has jurisdiction to try a suit for land and mesne profits, the value of the combined suit coming within the limits of his jurisdiction, though the value of the suit for the land was below the value cognizable by him.—(F. B.) 7 W. R. 174.

9. A claim for a hoondee may be joined in one suit with a claim for the return of money paid in excess of rent due. —7 W. R. 409.

10. S. 8 Act VIII allows — in the same suit by and against the same parties; but there is no clause which allows different causes of action to be joined in one suit against parties where each of those parties has a distinct and separate interest.—(F. B.) 8 W. R. 15. *See also* 8 W. R. 64; 9 W. R. 490, 525; 11 W. R. 273, 397; 12 W. R. 11, 478; 13 W. R. 429; 15 W. R. 408; 18 W. R. 288, 464; 20 W. R. 147; 21 W. R. 206; 23 W. R. 389, 400; 25 W. R. 60.

11. The High Court in appeal declined to dismiss a suit on the ground of mis —, where the suit had been fully tried below.—10 W. R. 45. *See* 11 W. R. 397.

12. Where the first Court tries a case as a whole, notwithstanding that it finds the causes of action to be several and distinct against several defendants, the Lower Appellate Court ought to try the case as made up of separate suits.—10 W. R. 187. *See* 11 W. R. 397, 14 W. R. 381.

13. A suit to recover the amount of the hoondee, in which four persons were made defendants, *viz.* the drawer, the acceptor, the indorsee, and the drawer's principal, was held to be a combination of four suits in one.—10 W. R. 263.

14. There is a misjoinder when a plaint contains separate causes of action on the part of distinct plaintiffs, though but one prayer.—10 W. R. 279.

15. Where it was urged that the Judge had, under s. 9 Act VIII, a discretion to divide the case into two separate cases, but did not exercise that discretion properly in dismissing the case altogether,—*Held* that the Judge should have been called to exercise the discretion.—11 W. R. 397.

16. A suit to recover possession of a house as well as the rent due thereon was held to be no mis — but warranted by s. 8 Act VIII.—11 W. R. 542.

17. The provision of s. 9 Act VIII under which a Court has the discretion to order separate trials of different causes of action, applies only to causes of action mentioned in s. 8, *i.e.* by and against the same parties.—12 W. R. 70.

18. Was allowed in respect of three several and distinct items, one on a general adjustment of account, another on account of deposit, and the third on account of a deed, as in no way affecting the jurisdiction of appeal.—12 W. R. 529.

19. The omission to join causes under s. 8 Act VIII is no ground for the infliction of the penalty prescribed by s. 7. —13 W. R. 196.

20. Though there is not in Act X any express provisions to the same effect as s. 8 Act VIII allowing —, yet on general principles a suit for rent ought not to be dismissed in consequence of its having been so framed as to include the lands of two tenures.—13 W. R. 284.

21. The mere claiming of three shares of money due under a bond executed in favor of plaintiff and others jointly, under different titles derived from different persons in different ways, cannot affect the unity of the cause of action.—17 W. R. 528.

22. Two causes of action, one by plaintiff as purchaser of arrears of rent, and the other for rent due, were held to be properly joined in one suit, cognizable by the Civil Court, under s. 8 Act VIII, without any such distinction as that of different sides of the Court.—19 W. R. 431.

23. Where the question is whether there was only one, or more than one, cause of action, it is not enough to say that the title of the defendant rested upon different and distinct transactions, and was supported by distinct and separate evidence.—20 W. R. 103.

See Appeal 157.
Cause of Action 11, 17.
Jurisdiction 43.
Measurement 12, 17.
Mesne Profits 21, 85.
Misjoinder.
Mortgage 299.
Multifarious.
Specific Performance 10.

Joinder of Parties.

1. In a suit by two plaintiffs for the value of their personal property plundered, if the cause, time, place, and the parties charged, be the same, the fact that both plaintiffs have not a joint interest in the whole, is insufficient to put them out of Court.—W. R. Sp. 81.

2. No person ought under s. 73 Act VIII of 1859 to be added as a plaintiff whose right of action is barred by limitation.—W. R. Sp. 152.

3. The dismissal, by the Judge on appeal, of a suit for rent as multifarious because brought against a number of tenants holding separately, was upheld in special appeal, though that plea was not taken in the first Court.—W. R. Sp. (Act X) 86 (2 R. J. P. J. 371).

4. S. 73 Act VIII is permissive, not imperative.—1 W. R. 228 (3 R. J. P. J. 281), 15 W. R. 534.

5. There was no improper use of judicial discretion in this case in the Court refusing to join certain persons as defendants after the case had been gone into.—*Ib.*

6. The discretion of a Court to add persons as defendants under s. 73 Act VIII will not be interfered with by High Court unless it is manifestly unjudicial and wrong.—2 W. R. 158, 5 W. R. 109. *See also* 22 W. R. 278.

7. Where a third party's cause of action is different from that of a plaintiff in a suit, he cannot be made a co-plaintiff —2 W. R. 280.

8. A Court may, under s. 73 Act VIII, add parties to a suit, or transpose a party from his position as *pro formâ* defendant and place him among the plaintiffs after amendment of plaint under s. 29.—7 W. R. 39.

9. A person cannot be made a party to a suit under s. 73 unless he is interested in the subject-matter, or is likely to be affected by the result, of the suit. Where an intervenor claimed a portion of the subject-matter of the suit adversely to both plaintiff and defendant, it was held wrong to add him as a party, as his interests would not be affected by the result.—7 W. R. 201. *See also* 9 W. R. 158; 10 W. R. 283, 368; 11 W. R. 361; 12 W. R. 334; 13 W. R. 73, 78, 362, 443; 14 W. R. 90; 15 W. R. 97; 16 W. R. 19, 101; 19 W. R. 248; 21 W. R. 51. *But see* 18 W. R. 313.

10. A purchaser of property *pendente lite* need not be made a party to the suit; he purchases with notice and is bound by the title of his vendor.—7 W. R. 225.

11. In a suit between mortgager and mortgagee, a third person who alleged that the mortgage was collusive and adverse to his interests, was made a party under s. 73 Act VIII.—7 W. R. 315. *See* 11 W. R. 361.

12. A Judge has discretion to add a fresh respondent to the record, he having been a party to the original suit.—8 W. R. 367.

13. Persons not parties in the original suit are not entitled to have themselves added as appellants in the Appellate Court.—9 W. R. 209.

14. When an intervenor in a suit to recover rent is made a party at the request of the plaintiff, the latter cannot afterwards, by special appeal, get rid of the effect of his own act.—9 W. R. 338.

15. Where a Hindoo widow sues as guardian of her

JOINDER OF PARTIES (*continued*).

daughter by her first husband, claiming the estate of her son who died after her re-marriage, and then applies to be made a co-plaintiff in her own right, the Lower Court is not wrong in arraying her among the parties to the suit under s. 73 Act VIII.—10 W. R. 34.

16. If a party, whose interests are identical with the plaintiff's (*e.g.* where they are both co-sharers), declines to join as a plaintiff, the Court may at its own discretion make him a defendant under s. 73 Act VIII.—10 W. R. 108. *See* 11 W. R. 270, 15 W. R. 432.

17. Where a suit by a guardian without a certificate under Act XL of 1858 was dismissed by the Lower Appellate Court, and the minor on coming of age applied to have his name substituted on the record, the High Court, under s. 73 Act VIII, ordered that his name should be added as plaintiff and the suit be proceeded with, plaintiff to pay costs of defendant.—12 W. R. 102.

18. The placing of an intervenor upon the record as a defendant and the deciding of an issue between him and the other parties to the suit, was declared wholly irregular in a suit for the enforcement of a contract of sale, where the intervenor claimed a preferential title under a subsequent registered conveyance.—13 W. R. 73.

19. There is no more reason why the amendment of a plaint should be allowed under Act X of 1859 than a —.—13 W. R. 126.

20. In a suit for confirmation of possession where an intervenor states that he is in possession, he is rightly made a defendant under s. 73 Act VIII.—13 W. R. 362. *See* 16 W. R. 235.

21. The action of the Court under s. 73 Act VIII is a matter of discretion and therefore not a matter of appeal. —14 W. R. 90. *See* 14 W. R. 285. *But see* 22 W. R. 278.

22. S. 73 Act VIII is not restricted to suits for title to immoveable property only, but applies to moveable property also.—14 W. R. 285.

23. In a suit to recover possession of property held by a Hindoo widow, the reversioner was held to have been erroneously made a co-defendant and to have no right to appeal from the decision passed against the widow only.—15 W. R. 6.

24. Parties whose interest in the subject-matter of the suit is, according to their own allegation, of a very remote and contingent character, should not be added as defendants in the cause under s. 73 Act VIII.—15 W. R. 12.

25. A Court was held justified in refusing under s. 73 Act VIII to make a corporation a party in a suit which was brought against the agent of that corporation and not against the corporation itself.—15 W. R. 534.

26. An Appellate Court has no authority under s. 73 Act VIII to strike out a respondent's name and in lieu of it to make other parties defendants and then send the case down to the Lower Court for re-trial as against those parties.—16 W. R. 183.

27. A Court must limit its enquiry to the issues necessary for the trial of plaintiff's right to relief, even when an intervenor is made a defendant under s. 73 Act VIII, unless his intervention raises a new issue.—16 W. R. 235. *See* 19 W. R. 248, 24 W. R. 101, 25 W. R. 29.

28. A party who has been irregularly admitted as an intervenor in a suit for rent before a Moonsiff as if it was being tried under Act X of 1859, is not entitled to be treated as if he had been made a party under s. 73 Act VIII.—17 W. R. 176. *See* 19 W. R. 248.

29. The addition of a party does not affect the merits of a suit according to s. 363 Act VIII; but the addition of a party without the adjournment of the hearing as provided for by s. 73, may be an error or irregularity.—17 W. R. 370 (*foot-note*).

30. The joinder as co-plaintiffs of two persons claiming to be the representative of a deceased plaintiff was held to be an irregularity which was cured in this case by the consent of parties.—17 W. R. 475.

31. A suit in which plaintiff alleged that the defendants (including ryots against whom he had been unsuccessful in the Collector's Court) had in combination fraudulently availed themselves of a fabricated *jummabundee* paper as evidence to support certain *mokurruree* claims, and had thereby ousted him from the full enjoyment of his *milkeut* right, was held to be single in its character and not multifarious.—19 W. R. 203.

32. Where two plaintiffs suing jointly to recover khas possession of a specified portion of land, fail to make out their title to that portion or any part thereof, and succeed only in making the title of one of them to an undivided moiety of the whole land, this does not give them or either of them a title to an indefinite decree for such moiety.—20 W. R. 364.

33. A third party who intervenes in a suit for rent stating that he has acquired the rights of the tenants and has paid plaintiff a smaller rent, can be made a defendant under s. 73 Act VIII; the object of making a third party a defendant under such circumstances being that a decision may be come to between plaintiff and the right defendant and relief given where it is due.—22 W. R. 385. *See* 25 W. R. 29.

34. In a suit for arrears of rent, where certain parties intervened alleging that they were co-sharers with plaintiff, —*Held* that the intervenors could not be made co-plaintiffs against their will unless there was such an equity as to compel them to be such, and that the Lower Court was right in placing them upon the record as defendants.—22 W. R. 229.

But where no part of the rent is paid, one co-sharer cannot ask to have a decree for his share only. The whole rent ought to be sued for in one suit, and the persons jointly entitled to receive the rent ought to be the plaintiffs. If the co-sharer desiring to bring the suit cannot join the others as plaintiffs with their consent, he might claim the whole rent and ask the Court, under s. 73 Act VIII, to make the other co-sharers plaintiffs, which would be a simpler and better plan than making them defendants.—22 W. R. 394.

26. Although difficulty might in some cases arise as to the right of the lessee of one owner to claim a partition with the other owners, yet where that difficulty was removed by plaintiff's lessors having expressly covenanted in their *meeras* pottah that he shall be entitled to claim partition, the Court was held to have power, under s. 73 Act VIII, to transfer the lessors on the record from the position of defendants to that of plaintiffs.—22 W. R. 437.

36. In a suit to recover possession where defendants alleged that a portion of the land sued for was held by third parties not before the Court,—*Held* that the Court had no right to insist on these third parties being added as defendants against the plaintiff's will when she wished to abandon, as against the original defendants, her claim to the property in which alone the third parties were interested. —24 W. R. 100.

See Arbitration 31.
Bond 2, 17.
Cause of Action 18.
Contribution 35.
Dismissal of Suit or Appeal 23.
Endowment 70.
Evidence (Estoppel) 136.
High Court 56.
Irregularity 7, 10.
Jurisdiction 46, 363, 461.
Limitation 42, 134, 140.
Mesne Profits 86.
Minor 1.
Misjoinder 2, 4, 6, 7.
Mortgage 128, 285, 297, 299, 303.
Objection (under s. 348 Act VIII of 1859) 19.
Onus Probandi 14.
Practice (Parties) 35.
Small Cause Court 45.
Special Appeal 84, 109, 124.

Joint Decree.

1. A judgment-debtor cannot make a private arrangement with a decree-holder, exonerating the former from payment of any portion of a —.—2 W. R. 266.

2. A — can be executed against any of the debtors

JOINT DECREE (*continued*).

whom the decree-holder may select.—2 W. R., Mis., 49; 12 W. R. 305.

3. Though a decree-holder has a right to put joint and common decrees in force against one or all of the defendants in the order he thinks fit, the claim to be enforced must be limited to the particular lands or properties with which particular defendants are clearly shown to have been connected.—2 W. R., Mis., 51; 14 W. R. 175.

4. The application for dividing the amount of a — should be made, and the order for such division obtained, at the time of the decree and not afterwards.—*Ib.*

5. A plaintiff suing upon an *ikrar*, is not entitled to a decree contrary to its terms; thus sharers severally liable cannot be made jointly liable.—7 W. R. 156.

6. The joint nature of an *ijmalee* decree cannot be altered by a subsequent arrangement of the parties.—13 W. R. 128.

7. In a suit against heirs inheriting equally, a — may be passed without determining the liability of each.—15 W. R. 192.

8. A — remains a — notwithstanding the decree-holder proceeding against one or more of the judgment-debtors separately, as by doing so he does not relieve the other debtors from their joint liability.—17 W. R. 496.

See Appeal 184.
Contribution 12, 17, 18, 19, 28, 29, 34.
Damages 78.
Decree 1.
Hindoo Widow 100.
Limitation 95, 250.
,, (Act XIV of 1859) 53, 60, 173, 177.
,, (Execution of Decree) 5, 6.
Mesne Profits 101.
Possession 32.
Practice (Execution of Decree) 9, 11, 32, 59, 67, 72, 74, 81, 95, 98, 122, 140, 142, 163, 193, 224, 257, 264, 270.
Right to Sue 5.
Sale 166.

Joint Hindoo Family.

See Hindoo Law (Coparcenary).

Joint Magistrate.

Not judicially subordinate to Magistrate of District.—2 W. R., Cr., 64 (4 R. J. P. J. 564). *See also* 8 W. R, Cr., 61.

See Jurisdiction 402.

Joint Stock Company.

1. Defendant applied for 100 shares in a —, and on their being allotted to him paid 1000Rs. deposit. His name was placed upon the register of shareholders, but he refused to sign the articles of association. *Held* that he was not liable as a shareholder.—2 Hyde 238.

2. An appeal was held to lie under s. 27 Act XXI of 1863 and s. 141 Act X of 1866 from an order of the Recorder of Rangoon directing appellants to pay as contributories to a — in liquidation.—9 W. R. 539.

3. The liability of registered shareholders as members of a — to contribute, is only *primâ facie*; the sole step of joining others in affixing their names in a prospectus to certain shares does not amount to an agreement of membership nor make them contributories.—*Ib.*

4. The power of sanctioning a compromise allowed to the Courts by s. 174 Act X of 1866 should be exercised with great caution. The compromise may be entered into before the list of contributories has been settled or the liabilities or competence of the shareholders has been ascertained.—(P. C.) 12 W. R., P. C., 26.

5. Where a party takes shares in a —, agreeing to forfeit his shares if he does not pay calls upon them at certain stated intervals, the penalty of forfeiture should be enforced against him if the calls are not paid according to agreement. The damages should not be measured by the amount of the call.—24 W. R. 358.

6. No general manager or even managing director of a — has power permanently to alienate as rent-free the property of the shareholders without their consent.—25 W. R. 245.

See Irregularity 10.
Joinder of Parties 25.
Lakheraj 21.
Lien 6.
Plaint 10.
Practice (Parties) 4, 23.
,, (Suit) 35.
Stamp Duty 70.
Summons 10.

Joint Tenant.

A proprietor is entitled to proceed for the whole rent against any member of a joint and undivided tenancy, the — being left to seek relief against his co-tenants or their heirs.—Sev. 842*a*. *See also* 7 W. R. 272. *But see* 10 W. R. 304.

See Co-sharers 13, 39, 41.
Evidence (Estoppel) 132.
Lease 44, 73.
Limitation 238.
Partition 8.
Putnee Talook 92.
Rent 71, 100.

Jote.

1. Nij-jote. *See* Enhancement 281; Occupancy 72, 82; Sale 91.
2. Raj-baree-jote. *See* Onus Probandi 229.
3. Sursoree-jote. *See* Enhancement 159.
4. Nuksan-jote. *See* Occupancy 92.

See Churs 66.
Indigo 8.
Julkur 23.
Kubooleut 12.
Lease.
Occupancy 31, 79.
Practice (Possession) 88.
Rent 56, 60.
Sale 24, 94.
Settlement 25.
Sub-lease 4, 9.

Journey.

See Jurisdiction 480.

Joutuck.

See Lakheraj 31.

Judge.

1. No one should be a — in a case in which he is himself interested.—13 W. R., Cr., 60, 66; 14 W. R., Cr., 74; 15 W. R., Cr., 57. *See* 21 W. R., Cr., 31. *But see* (F. B.) 27 W. R., Cr., 39.

2. — as witness.—*See* Judgment 11; Practice (Criminal Trials) 34, 51.

3. Mistake by Judicial Officer.—*See* Amends 6.

4. A — has no power to keep a case on his own file and refer the witnesses to be examined, some by the Moonsiff, and some by the Subordinate Judge, and then to examine it himself. Evidence so taken is not admissible.—16 W. R. 176.

JUDGE (*continued*).

5. No one should be a — in a case which was instituted by his authority.—21 W. R. 312. *See also* 24 W. R., Cr., 58.

6. A Joint Sessions — has no power to act under s. 295 Act X of 1872, which applies only to the Sessions — of the Division.—25 W. R., Cr., 21.

See Conviction 5.
Judgment 6, 11, 18.
Practice (Suit) 12, 56.

Judgment.

1. A — is not a — *in rem*, because, in a suit by A for the recovery of an estate from B, it has determined generally concerning the *status* of a particular person or family; it is a — *inter partes*.—(P. C.) 2 W. R., P. C., 31 (P. C. R. 520).

2. Duty of Lower Courts to pronounce opinion on all important points.—(P. C.) 5 W. R., P. C., 63 (P. C. R. 631). *See also* 8 W. R. 481, 11 W. R. 312.

3. The determination in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made.—(P. C.) 6 W. R., P. C., 57 (P. C. R. 649). *See also* 9 W. R. 170; 12 W. R. 80; 14 W. R. 142, 386, 466; 15 W. R. 433; 16 W. R. 123; 18 W. R. 274; 19 W. R. 333; 20 W. R. 272; (F. B.) 21 W. R. 208; 23 W. R. 158; 25 W. R. 425.

4. A — in another case is insufficient evidence against a party who had no part in it.—1 W. R. 270. *See* 14 *post*.

5. Reversal of a predecessor's —, when allowable and when not.—2 W. R. 174, 7 W. R. 161.

6. Private knowledge of a Judge is not to be imported into a case.—2 W. R. (Act X) 29 (4 R. J. P. J. 62). *See also* 22 W. R., Cr., 79; 23 W. R. 15; 25 W. R. 303; (P. C.) 26 W. R. 55; and Practice (Suit) 12.

Nor the opinion of an Assessor derived from personal knowledge and unsupported by evidence or record.—21 W. R., Cr., 28.

7. A Judge may raise legal points which arise naturally out of the facts found, but not independently of facts impliedly admitted.—3 W. R. 28.

8. A — as it were *in rem*, setting aside a mokurruree pottah on the suit of two co-sharers, renders it inoperative as against all.—3 W. R. 192. (*Over-ruled by F. B.*) *See* 14 *post*.

9. An order of a Deputy Collector refusing to entertain a suit is a — within the meaning of s. 160 Act X, from which an appeal lies to the Judge.—3 W. R. (Act X) 17 (4 R. J. P. J. 400).

10. S. 185 Act VIII is not complied with by a Judge pronouncing a plea to be absurd or ridiculous without giving reasons.—6 W. R. (Act X) 21.

11. A Judge cannot give evidence in a case merely by making a statement of fact in his —, but is bound to make that statement as any other witness.—7 W. R. 189, 9 W. R. 252, 25 W. R. 121, (P. C.) 26 W. R. 55.

12. It is irregular to add to a — once delivered under ss. 183, 184, and 185 Act VIII, when the effect of the addition is to alter the grounds on which the — proceeded. —7 W. R. 286.

13. A decision by a competent Court that a Hindoo family was joint and undivided, or upon a question of legitimacy, adoption, partibility of property, rule of descent in a particular family, or upon any other question of the same nature in a suit *inter partes* or rather in an action *in personam*, is not a — *in rem* or binding upon strangers; nor is a decree in such a case admissible as evidence against strangers.—(F. B.) 7 W. R. 338. *See* 8 W. R. 64, (P. C.) 17 W. R. 104.

14. A — against one sharer in a mokurruree pottah declaring the pottah to be a forgery, is not a — *in rem*, nor is it admissible as evidence against another sharer (not a party to the former suit) suing to obtain a declaration of his rights and interests under the pottah.—(F. B.) 7 W. R. 347.

15. *Quære.* Whether when a Subordinate Judge who, after hearing the evidence in a suit, was promoted in the same district, refrained from deciding the case and left it to his successor for decision, such — was legal.—7 W. R. 441.

16. When a — in a previous suit is recited in a plaint as material to the cause of action, plaintiffs cannot object to a reversal of that — being used against them.—8 W. R. 492.

17. When a Judge, after writing his — but before delivering it in open Court, dies, or leaves the Bench, his written — is not to be considered as a —, but merely as an opinion.—(F. B.) 9 W. R. 1. *But see* 17 W. R. 475.

18. A Judge should not recommend future litigation or advise particular modes thereof.—9 W. R. 301.

19. A decree cannot bind plaintiffs who were not parties to it; it is a decree *inter alios*.—12 W. R. 21.

20. No adverse opinion in a — dismissing a suit can affect defendant's rights in any future litigation between the parties.—13 W. R. 239.

21. A Court should always see how far the circumstances of one case are really on all fours with those of another, before it refers to the — in the one for the reasons of his — in the other.—15 W. R. 2.

22. A Judge ought not to make for a party a case which the latter does not make for himself.—15 W. R. 363.

23. A — *inter partes* may be received in favor of a stranger as against a party thereto, not as concluding such party, but as evidence *quantum valeat*.—16 W. R. 112.

24. The decision of one Court (not even of the Privy Council) can be no binding authority on another Court in a question of fact between other parties.—18 W. R. 469.

25. In a suit by A, a decree between B and another of the defendants in a former suit to which neither A nor any one privy to him in title was a party, is not admissible in evidence as a — *inter partes*.—19 W. R. 156.

26. A — which has been set aside by a superior Court as made without jurisdiction, and which is no — at all, cannot have any probative force between the parties.—19 W. R. 283.

27. Plaintiff instituted two suits, one against S and the other against the present defendant. The one against S came up in appeal to the High Court, and the other having been heard in appeal by the District Judge,—*Held* that the District Judge, instead of applying the — of the High Court in the case of S as evidence against the present defendant, ought to have decided the case upon the evidence on the record.—22 W. R. 538.

28. It is a general principle that — must be delivered by the Judge who has heard the evidence.—23 W. R., Cr., 59.

29. Where two suits for rent brought by the same party against different defendants were dismissed on the ground that the Judge entirely disbelieved the evidence, a separate — in each case was held to be unnecessary.—24 W. R. 376.

See Adhikaree 2.
Appellate Court 2, 3, 4, 5, 6, 7, 15.
Arbitration 95.
Attorney and Client 14.
Confession of Judgment.
Construction 112.
Costs 90, 92.
Decree 3, 5, 10, 24.
Enhancement 114, 241.
Evidence 43, 91.
„ (Documentary) 66.
„ (Presumptions) 14.
High Court 16, 19, 37, 61, 90, 122, 123, 151, 173.
Husband and Wife 22.
Issues 1.
Jurisdiction 213, 233, 353.
Limitation (Act XIV of 1859) 137.
Lunatic 21.
Marriage 29.
Practice (Appeal) 8, 99.
„ (Execution of Decree) 192.
„ (Parties) 6.
„ (Review).
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JUDGMENT (*continued*).

See Special Appeal 116.
Water-course 8.
Will 51.

Judgment-Creditor.

See Mortgage 238.
Practice (Execution of Decree) 245, 248.
Sale 8, 15, 60, 69, 83, 84, 111, 156, 159, 169, 231.
Security 22.

Judgment-Debtor.

See Arrest 4, 9.
Attached Property 6.
Auction-Purchaser (Execution Sale) 14.
Benamee 1.
Conveyance 11.
Contribution 4, 5.
Declaratory Decree 31.
Decree 1.
Fraud 7.
Gift 47.
Joint Decree 1.
Onus Probandi 15, 236.
Practice (Attachment) 11, 14, 23, 44.
,, (Execution of Decree) 192.
Registration 5.
Sale 3, 15, 44, 84.
Sheriff 3.
Voluntary Payment 1.

Judgment in rem.

See Evidence (Estoppel) 22, 29.
Judgment 1, 8, 13, 14.
Survey 17.

Judgment inter partes.

See Judgment 1, 13, 23.

Jujmans.

See Hindoo Law (Religious Ceremonies) 1, 17.

Julkur.

1. Thakbust maps are not evidence of title in a dispute regarding a right of fishery.—W. R. Sp. 120.

2. An exclusive — right in a navigable river, set up against the ordinary rights of the State and the community, must be established by clear and strong evidence.—W. R. Sp. 243 (2 R. J. P. J. 309, L. R. 16).

3. Possession and enjoyment for a series of years are cogent evidence of title.—*Ib.*

4. A proprietor of the entire — rights of a pergunnah is entitled to fish in any natural water-course or in any jheel or pond not made by human agency.—W. R. Sp. 267 (L. R. 48).

5. A has no right to erect a bund on his own land so as to intercept the passage of fish in a natural stream and thereby render B's right of fishing less profitable, unless the bund has existed many years without complaint.—W. R. Sp. 275 (L. R. 58).

6. When a — dries up, its holder is not necessarily entitled to land below the water.—1 W. R. 78.

7. Rights of — in relation to flooded lands may be acquired when the submersion is gradual and not sudden.—1 W. R. 88.

8. The claim of Government to the — of navigable rivers not forming a portion of settled estates, is cognizable only in the ordinary Civil Courts. Reg. II of 1819 is not the Regulation under which Government should proceed in such cases.—1. W. R. 116.

9. To obtain a decree for a — as part of an estate settled with him, of which adverse possession has been obtained by Act IV of 1840, plaintiff must show not only original boundaries but modern possession.—2 W. R. 304.

10. Mere occupancy of a — for a series of years by a tenant-at-will, can give him no preferential right against his landlord's lessee. Act X of 1859 does not apply to such a case.—2 W. R. (Act X) 19.

11. The mere act of fishing in a tank is no proof of ownership.—5 W. R. 281.

12. Rights of — cannot be claimed in half of a flowing river.—5 W. R. 286.

13. A right of fishery is not affected by a change in the source whence the water comes or the course which it takes.—6 W. R. 17.

14. Where co-proprietors have a right to fish, one of them cannot be sued for trespass for fishing merely because the —, by a change in the course of a river, runs over the land allotted to plaintiff under a butwarra, nor can plaintiff in such a suit obtain a share of the fish on the ground that he had a share in the —.—6 W. R. 41.

15. The provision in a — pottah that the lessee cannot sue for recovery if he fail to catch fish, is no bar to his claiming a refund of rent if the lessor (and consequently the lessee) is deprived of possession by order of Court.—7 W. R. 405.

16. One sharer of an *ijmalee* — is not debarred from collecting his separate jumma simply because another sharer prefers a consolidated *bhittee* jumma.—11 W. R. 374.

17. Plaintiffs sued for possession of certain — lands as belonging to their estates. Plaintiffs and defendants were respectively the proprietors of two adjacent estates which originally formed one talook in the occupation of the defendant's ancestors, which talook was severed into two estates at a sale for arrears of revenue. It was found as a fact that defendants were in possession under an Act IV award, and that they and their ancestors exercised the — and other rights when the land was covered with water. *Held* that plaintiffs could succeed only by establishing a better title than defendants to the — lands, and by proving that the effect of the revenue sale was to transfer to them, as part of the talook which belonged to them, any soil which might be recovered from the bheel.—(P. C.) 11 W. R. P. C. 1. *See also* 11 W. R. 566.

18. In a dispute about — between the proprietors of neighbouring estates, where the title-deeds do not specify the pieces of land or water in contest, the title must depend on possession.—12 W. R. 164.

19. The right of fishing in a navigable river does not belong to the public, nor is the Government prohibited by any law from granting to individuals the exclusive right of fishing in such a river.—15 W. R. 212. *See* 16 W. R., Cr., 78.

20. The Lower Appellate Court was held to have been wrong in law in reversing a decree establishing a — right in a river, on the ground that it was possible that the narrow inlet connecting the river with the disputed body of water which occupied what was once its bed, might silt up later in the year.—18 W. R. 460.

21. Parties exercising a right to fish in a — mehal under a lease from part-owners cannot be regarded as trespassers in relation to other parties holding a similar lease from the other co-sharers.—20 W. R. 362.

22. A party owning the right of fishing in a river from the time of the Permanent Settlement, is at liberty to exercise that right in the open channels abandoned by the river up to the time when the channels became finally closed at both ends, *i.e.* so long as fish can pass to and fro.—21 W. R. 27.

23. Where a jotedar had exercised rights of fishery over two julkurs for more than 12 years, not as the owner of the jote (with which the julkurs were not connected), but as a tenant under a landlord,—*Held* that such possession did not confer upon him a right of occupancy.—23 W. R. 433.

24. The right to a — by no means involves a right to the soil when the — is either dried or filled up by accumulation of soil.—24 W. R. 200. *See also* 11 W. R. 272.

25. In a suit by a landlord to recover possession of a — on the allegation that defendants never had any but

JULKUR (*continued*).

temporary tenancy and that they had retired from the fishery, where defendants in answer set up a *meeras* right,—*Held* that the suit should be looked upon as a demand for possession from the defendants, or as it were a notice to give up possession, and that the question to be tried was whether the defendants were entitled to retain possession. —24 W. R. 266.

26. A plaintiff is not prevented from bringing a suit to establish his right to a portion of a fishery, because at some previous time he had claimed to collect rent over the whole fishery.—25 W. R. 481.

See Churr 15, 35, 64, 77, 79.
Criminal Trespass 6.
Ejectment 20.
Evidence (Presumptions) 18, 24.
Joinder of Causes of Action 7.
Jurisdiction 217, 224.
Kubooleut 41, 44.
Limitation 208.
,, (Reg. II of 1805) 3.
Onus Probandi 72, 190, 244.
Res Judicata 9.
Resumption 9.
Settlement 9, 15.
Small Cause Court 11.
Theft 5, 15.
Water 2, 6.

Jummabundee.

See Enhancement 247, 274.
Evidence (Documentary) 60, 84.
,, (Oral) 47.
Joinder of Parties 31.
Mesne Profits 98.
Rent 106.

Jumma Nuvees.

A ryot cannot contest the authority of a — to grant a *hookumnamah*, when the zemindar, though made a defendant, does not do so.—W. R. Sp. 276 (L. R. 60).

Jumma-Wasil-Bakee.

See Evidence (Documentary) 23, 47.
Mortgage 5.

Jungle.

See Enhancement 127.
Forfeiture 4.
Ghatwals 11, 32.
Junglebooree Tenure.
Jungle Mehals.
Kubooleut 64.
Lease 31, 49, 50.
Municipal 6, 32.
Practice (Possession) 56, 61.
Waste Land.

Jungleboree Tenure.

1. S. 8 Reg. VIII of 1793 defines a — as a grant to a man and his heirs.—2 Hay 14 (Marshall 250).

2. And it applies only to a — which existed at the time of the passing of that Regulation.—2 Hay 398.

3. The receipt of rent, by a zemindar, from the purchaser of a — whom he has dispossessed, does not amount to a ratification of the purchaser's right to hold under a pottah transferred to him by the vendor who acquired it from the zemindar's naib without authority.—W. R. Sp. 292.

4. A jungleboorec pottah how long good with reference to cl. 4 s. 26 Act I of 1845.—1 W. R. 195.

5. Its effect upon an auction-purchaser where it gives the tenant power to extend his land at the same rate of rent as that of the original land.—*Ib.*

6. A jungleboorec pottah, granted by a Hindoo widow, and confirmed by persons interested in disputing it, cannot be cancelled at the suit of one of those persons.—2 W. R. 291.

7. The mere admission by the defendant that the lands in question are within the plaintiff's zemindaree, is not sufficient to start the plaintiff's case when he sues, as zemindar, to cancel and resume an alleged hereditary —.—6 W. R. 130.

See Enhancement 66, 81.

Jungle Mehals.

See Jurisdiction 2.

Jungipore.

See Gambling 2.

Jurisdiction.

1. The High Court can receive and adjudicate a point of — though not taken below.—W. R. F. B. 15 (Marshall 54).

2. Judicial powers of Agent to the Governor-General S. W. F. before Reg. XIII of 1833; and reference from his orders to Civil Courts of Zillah Ramghur and Jungle Mehals.—W. R. F. B. 26 (1 Hay 148, Marshall 80).

3. Of Revenue Court where relation of landlord and tenant is alleged and denied.—W. R. F. B. 29 (1 Hay 238, Marshall 99). *See* 140, 168, 195 *post*, and 16 W. R. 82.

4. The — of a Collector under Act X of 1859 is not affected by the nature of the defence set up.—W. R. F. B. 47 (1 Hay 347, Marshall 148). *See* 16 W. R. 82.

5. A suit for rent against two persons, one as the *benamee* and the other as the actual farmer, is cognizable by the Revenue Court under cl. 4 s. 23 Act X. In such a suit the plaintiff can only obtain a decree against one or other, not both, of the defendants.—W. R. F. B. 58 (1 Hay 449, Marshall 188).

6. A Deputy Collector has no — to try a suit under s. 30 Reg. II of 1819, but should retain the plaint and refer the party to the Collector who has —.—(F. B.) W. R. F. B. 70 (2 Hay 107, Marshall 265). *See also* 1 Hay 395 (Marshall 483).

7. In a suit by a zemindar to assess or resume land alleged to be invalid lakheraj under s. 28 Act X, a Collector has no — to try the validity of a title under a grant made prior to 1st Dec., 1790.—(F. B.) W. R. F. B. 70.

8. A Court has power to send a case for investigation by a Magistrate under s. 171 Act XXV of 1861, where no particular individual has yet been accused.—W. R. F. B. 71 (2 Hay 236, Marshall 270). *See also* 5 W. R., Mis., 18.

And where no particular charge has been specified.—13 W. R., Cr., 44. *See* 17 W. R., Cr., 35.

9. A charge of extortion can be entertained in a Civil Court.—(F. B.) W. R. F. B. 84.

10. Of Mofussil Court where the object of the suit is to obtain a share of mesne profits paid to a wrong party, and not to recover money had and received (the cause of action having arisen in Calcutta).—W. R. F. B. 86 (2 Hay 243).

11. A regular suit cannot be maintained to enforce a decree in a summary suit for rent which the Revenue Court found to be satisfied and therefore refused to execute.—(F. B.) W. R. F. B. 118 (2 Hay 655, Marshall 529).

12. S. 25 Act X does not preclude a zemindar or other person in receipt of the rent of land from suing in the Civil Court for the ejectment of a tenant after the expiration of his lease, instead of applying to the Collector for assistance.—(F. B.) W. R. F. B. 125 (1 R. J. P. J. 110, Sev. 89). *See also* 1 W. R. 142; 3 W. R. 170, 204; 7 W. R. 395; 11 W. R. 405.

JURISDICTION (*continued*).

13. The mere fact of a zemindar's Omlah residing in a cutcherry belonging to the zemindar within the — of a Small Cause Court does not make the zemindar a constructive dweller within the — of that Court.—S. C. C. 17.

Zemindaree business is not "business within the meaning of s. 8. Act XI of 1865, nor are Mookhtars and Kurpurdauzes carrying it on "servants or agents" within the meaning of the same section.—19 W. R. 341.

14. A Small Cause Court has no — in a suit for a share of the rent of a house being part of other property held by plaintiff and defendants in joint proprietorship and involving a partnership account.—S. C. C. 33. *See also* 10 W. R. 214.

15. A plea of — can be taken at any stage before final order.—S. C. C. 59. *See also* 2 W. R. 157, 2 W. R. (Act X) 76, 4 W. R. (Act X) 47, 7 W. R. 490, 14 W. R. 228, 16 W. R., Cr., 79. *But see* 10 W. R. 403, 18 W. R. 35, 22 W. R. 9.

16. Two suits cannot be instituted in the Small Cause Court for house-rent for different periods, but plaintiff must, under s. 7 Act VIII, bring one suit as upon one cause of action.—S. C. C. 63.

17. A Small Cause Court has no — in cases involving long and intricate investigations.—S. C. C. 66.

So held in a suit by a principal against an agent for adjustment and investigation of disputed items of account. —21 W. R. 283. *But see* 24 W. R. 478.

18. A suit for maintenance is not cognizable by a Small Cause Court.—5 W. R.. S. C. C., 5 (S. C. C. 66), 24 W. R. 474. *See* 234 *post*.

19. A suit will not lie, under s. 206 Act VIII of 1859. or s. 11 Act XXIII of 1861, for the value of goods given or for money paid in discharge or satisfaction or adjustment of a decree, such adjustment not having been made through or certified to the Court executing the decree.—3 W. R., S. C. C., 3 (S. C. C. 73, 126).

20. The consent of parties cannot give the High Court a — which it does not otherwise possess, viz., to reverse the decision of a Lower Appellate Court on facts.—1 Hay 25 (Marshall 4). *See also* 1 W. R. 103, 24 W. R. 205.

21. A civil suit will not lie for the reversal of an order passed by a Magistrate with —, though all the formal steps required by Act XXI of 1841 were not gone through, for the abatement of a local nuisance.—1 Hay 29 (Marshall 7).

22. Under Reg. V of 1812 a third party (other than the defaulting ryot) can recover damages for illegal attachment of crops against the wrongful distrainer in a Civil Court only; and a Collector's Court has — in such cases only under the procedure prescribed in Act X of 1846.—1 Hay 125. *See also* 7 W. R. 41.

23. An occasional visit within the — in a case where the defendant has a fixed place of residence out of the — of the district in which a suit is brought. is not sufficient to confer — by reason of inhabitancy.—1 Hay 132 (Marshall 61).

24. A suit for enforcing an alleged right to erect golahs at certain ghats and to collect duties from persons using them, is not a suit within the meaning of cl. 4 s. 23 Act X. and therefore not under the — of the Collector.—1 Hay 453 (Marshall 194).

25. The Collector has —to try a claim to rent made by a person to whom the zemindar has assigned the right to recover the rent.—1 Hay 574 (Marshall 199), 15 W. R. 344.

26. The circumstance that plaintiff preferred a criminal charge against defendant for the taking of his goods, which charge was dismissed, does not prevent plaintiff from suing in the Civil Court to recover damages for the taking or detention of the goods notwithstanding that the Criminal Court may have — upon a conviction to impose a fine and award it to the prosecutor as compensation.—2 Hay 13 (Marshall 248).

27. A suit was originally valued above 5000Rs., and on defendant's objection the first Court, reducing its valuation to 3590Rs., dismissed the case. After the lapse of one month and five days, plaintiff appealed to the Sudder Court, who, holding that the appeal lay to the Judge, transferred it to the file of the latter. The Judge dismissed the appeal as having been filed beyond time; and as plaintiff assigned no reason for preferring the appeal beyond time, the special appeal was also dismissed.—2 Hay 147.

28. A suit for accounts or money embezzled will not lie, under s. 24 Act X, against servants who are not employed in the management of land or collection of rent.—2 Hay 278 (Marshall 289).

29. Mesne profits cannot be recovered in a suit brought under cl. 6 s. 23 Act X of 1859, but must be sued for in the ordinary Civil Courts.—2 Hay 287 (Marshall 280).

30. A Zillah Court is not barred from taking cognizance of a suit based on inheritance and brought by a reversioner after the death of a Hindoo widow notwithstanding the defendant is in possession under a decree of the Supreme Court passed against the widow only, after foreclosure of a mortgage executed by the widow.—2 Hay 360.

31. When a suit is undervalued, the Court in which it is brought cannot allow the plaintiff to amend his plaint, if, by declaring the value to be far above its own —, the Court should oust itself of —.—2 Hay 386.

32. A suit for resumption of alleged lakheraj lands will lie in the Civil Court under s. 30 Reg. II of 1819, on the allegation that they were not in existence as lakheraj prior to 1st Dec., 1790.—2 Hay 389. *See* 63, 155 *post*.

33. S. 28 Act X simply curtailed the power vested in the zemindar under s. 10 Reg. XIX of 1793, and in no wise overrides the — of the Civil Court with reference to resumption suits.—*Ib.* *See* 63, 15 *post*, and 12 W. R. 135.

34. In a suit brought under s. 28 Act X, if it be found that the defendant's lakheraj tenure was created before 1st December 1790, the Revenue Court has no — to try its validity or otherwise, on any question bearing upon that issue.—2 Hay 437 (Marshall 355).

35. In a suit for rent before the Collector, the tenant set up that, by a *tumasook* or bond entered into between himself and his landlord after his lease, it was stipulated that, in consideration of an advance of money by him to the landlord, a part only of the rent should be paid, and the residue applied in satisfaction of the debt; and he claimed to be entitled to the benefit of that stipulation. *Held* that the Collector had — to enquire into the validity of the alleged *tumasook*, and to allow the deduction if satisfied that it was genuine.—Marshall 409.

36. Under s. 14 Act VIII a suit must be brought in district M for lands situate in district R, but which the survey authorities have adjudged, though erroneously so, to appertain to district M.—2 Hay 485. *See* 7 W. R. 200.

37. A suit by a person alleging himself to be the heir of a ryot evicted by the zemindar, who denies plaintiff's title as heir, cannot be brought under cl. 6 s. 23 Act X.—2 Hay 530.

38. A suit may be brought under cl. 6 s. 23 by a person having the right to possession, although he may not have a right of occupancy under s. 6.—2 Hay 533 (Marshall 415). *See also* 2 Hay 597 (Marshall 492).

39. A Civil Judge has — to make an order, under ss. 170 and 171 Act XXV of 1861, directing the Magistrate to investigate whether certain documents used before the Sudder Ameen were forged.—2 Hay 538 (Marshall 407). *See also* 5 W. R., Mis., 6.

40. A suit will not lie, under Act X of 1859, to recover rent wrongfully collected by a person not the agent of the landholder and without his authority, but such suit must be brought in the Civil Court.—Marshall 465.

42. The Revenue Court has not cognizance, under s. 25 Act X, of a suit to set aside a kubooleut on the ground that it is a forgery.—Marshall 496.

43. Two causes of action, each of which is cognizable by the Moonsiff's Court, cannot be joined together and brought in the Sudder Ameen's Court.—2 Hay 585. *But see* 3 W. R. 127, 6 W. R. 138, and (*over-ruled by* *F. B.*) 7 W. R. 174.

44. A suit for tolls for the use of a ferry belonging to the plaintiff, is not maintainable under cl. 4 s. 23 Act X of 1859.—2 Hay 598 (Marshall 504).

45. A, on behalf of her infant son B, contracted with C that he should be allowed, for the maintenance of her daughter whom he was about to marry, lands situate at X of a certain annual value. B, after coming of age, contracted at Y to pay C the annual allowance, and ratified the contract which had been made by his mother. *Held* (1) that, although the contract with B was entered into at Y, yet as by that contract he ratified the contract entered into by his mother and which related to lands at X, the Court of X had — in a suit for recovery of certain of the yearly payments; (2) that a suit for annual payments which

JURISDICTION (*continued*).

had accrued within 12 years of the commencement of the suit was maintainable, notwithstanding more than 12 years had elapsed since the contracts were entered into; and (3) that the Court might decline to allow interest on the arrears found to be due before suit, there being no stipulation in the contract for interest, and might award interest on the amount decreed, from the commencement of the suit to the date of the decree, and interest upon the aggregate amount, and upon the costs from the date of the decree until payment.—2 Hay 656 (Marshall 533).

46. A, after the grant of a putnee talook to B, fraudulently granted a pottah of the same land to his own daughter, and by means thereof she intervened in a suit by B against a ryot for rent, and prevented B from recovering in the suit. *Held* that this was evidence to support a suit by B against A under cl. 6 s. 23 Act X for illegally ejecting him from the tenure, and that the Collector, finding that the pottah was a mere device, had — notwithstanding the daughter was joined as a defendant in the suit.—Marshall 601. *See also* 5 W. R. (Act X) 55.

47. A decree in a suit upon a bond against the heir of the deceased obligor awarded to the plaintiff the amount of the bond from the property of the obligor, and directed that "the defendant be released from the claim in this suit." An order for the execution of the decree was set aside by the Principal Sudder Ameen on the ground that the decree did not warrant the issue of an attachment since it was not against any person. *Held* (1) that the decree was informal in not expressing that the debt was to be realized out of the assets of the deceased in or likely to come to the hands of the heir, but that the Principal Sudder Ameen had — to amend, and ought to have amended, the decree in this respect; and (2) that a suit was maintainable by plaintiff upon the decree recovered in the former suit, there being no other means of enforcing the former decree or recovering his debt.—Marshall 611.

48. S. 24 Act X does not give — to the Revenue Courts in every case of agency, but only in the case of an agent employed in the management of lands or in the collection of rents. If the agent be an agent for the receipt and custody of rents collected by others and paid to him, an action for accounts or for money received is not maintainable against him before the Collector.—1 R. J. P. J. 153 (Sev. 337).

49. A suit to recover possession of land with mesne profits may be brought in the Civil Court, the plaintiff not being bound to divide his cause of action so as to bring one suit for possession under cl. 6 s. 23 Act X in the Revenue Court and another suit for mesne profits in the Civil Court.—W. R. Sp. (Act X) 2 (2 R. J. P. J. 15); 1 W. R. 160; 2 W. R. 52; 7 W. R. 243, 414; 15 W. R. 171.

50. A suit for arrears due under an assignment of rent, is a suit for arrears of rent cognizable under cl. 4 s. 23 Act X, and not by the Civil Courts.—W. R. Sp. (Act X) 3 (2 R. J. P. J. 16). *See also* W. R. Sp. (Act X) 127, 7 W. R. 24.

51. A suit by a putneedar against his co-putneedars for his share of the rents collected by them, is not cognizable in a Revenue Court, but in the Civil Court.—W. R. Sp. (Act X) 12, (2 R. J. P. J. 83).

52. There is no — under Act X where the alleged dispossessors are not zemindars or superior holders of land.—*Ib.*

53. A zemindar cannot sue under Act X to have his share of the *putnee* rent defined.—W. R. Sp. (Act X) 16 (2 R. J. P. J. 91).

54. A suit by a putneedar to reduce the rent claimed by the auction-purchaser to the former rate, is not cognizable in a Revenue Court.—2 R. J. P. J. 147.

55. A suit by a lessor against a tenant and certain co-lessors to recover his share of the rent the whole of which had been credited to the defendant by the lessors, is not cognizable by a Revenue Court under cl. 4 s. 23 Act X.—W. R. Sp. (Act X) 28 (2 R. J. P. J. 149). *See also* 13 W. R. 59.

56. Where a suit from an order passed by the Collector in favor of the right of Government to resume certain lands was filed by mistake in the Court of the Sudder Ameen instead of the Judge, but the Judge on plaintiff's petition removed the suit to his own file,—*Held* that the plaintiff's original mistake had been condoned by competent authority, and that the Judge had — to try and decide the case.—Sev. 50*c*.

57. No Judge has power to give a party leave to sue; such an order would be a mere surplusage not binding on any Court.—Sev. 64.

58. A suit to recover possession, brought by one who had purchased the rights and interests of a ryot dispossessed of his land by the zemindar, is exclusively cognizable by the Revenue Court under cl. 6 s. 23 Act X.—Sev. 98.

59. A case between two ryots contending for proprietary right, irrespective of the rights of a landlord who is entitled to hold certain lands in *nij-jote*, is cognizable by the Civil Court, and not by the Revenue Court, as being one for the ordinary possession of lands.—Sev. 217.

60. The Civil Court can decree restitution to a lakherajdar ousted by the zemindar under s. 10 Reg. XIX of 1793, if the lakherajdar held under a grant anterior to 1790, and refer the zemindar to a resumption suit.—Sev. 704.

61. The Revenue Court has exclusive — under cl. 6 s. 23 Act X in a case of illegal ejectment by the zemindar, whose defence is resignation of tenure by the plaintiff or his predecessor.—Sev. 842*b*.

62. If a ryot sue the person who is entitled to receive rent from him as the principal defendant, and can show that he was the person who illegally ejected him and that ryots or others aided him, the suit must be brought in the Revenue Court under cl. 6 s. 23 Act X; but the mere fact that the party entitled to receive rent is made a co-defendant in a case where the suit is substantially and primarily against a ryot as ejector, will not deprive the Civil Court of —.—Sev. 966*a*, 3 W. R. (Act X) 8 (4 R. J. P. J. 386). *See* 239 *post*.

63. A suit to resume can only be brought under s. 30 Reg. II of 1819 in the case of lands alleged to be held under a grant prior to 1st December, 1790; but when the title to hold as lakheraj is alleged to have arisen subsequent to that date, proceedings by a proprietor, wishing to have the lands assessed or to dispossess the grantee, must be taken under s. 28 Act X, and the burden of proof will lie on the party instituting the proceedings.—2 R. J. P. J. 263. *See also* 3 R. J. P. J. 27, 29; 1 W. R. 31. *But see* 158 *post*.

64. The Secretary of State for India, as representing the Government, cannot be said to "dwell or carry on business or personally work for gain," within the limits of the High Court, according to s. 12 of the Charter, so as to give that Court ordinary original civil —; but may be sued in any Court within the — of which the cause of action arose.—1 Hyde 37.

65. The obtaining of probate or letters of administration from the late Supreme Court is no ground for subjecting the party obtaining the same to the — of the High Court in a civil action in matters connected with the estate in respect of which probate or letters of administration were so obtained.—1 Hyde 67.

66. The High Court cannot exercise — in respect of land which is situate out of its local limits, even though it be in possession of the Receiver.—1 Hyde 111.

67. The High Court in its equitable — has authority to interfere with the legal rights of a father to the custody of his child, if he be an improper person.—1 Hyde 143.

68. The High Court under s. 12 of the Charter has — in all cases where the amount claimed is over 100Rs., whatever may be the amount recovered. The persons improperly bringing suits in the High Court, which fall within the — of the Small Cause Courts, may be mulcted not only in their own costs, but also in those of the defendant.—1 Hyde 272. *See* 19 W. R. 20.

69. The High Court has — to try the maritime causes of any ships, whether Foreign or British, wherever the cause of action may have accrued, provided the ships came within the — of the Court.—1 Hyde 275.

70. Although the High Court in its original — has no — over land or other immoveable property situate beyond the limits of Calcutta, and can make no adjudication of the right and title to such land; yet where a party is personally subject to the —, the Court has power to declare whether or not such party held such land subject to a trust.—1 Hyde 284.

71. When an objection to the — is first taken at a late stage of the suit instead of being brought forward, as it should be, at the first stage of the suit when the plaint is

JURISDICTION (*continued*).

presented for admission, the proper course is, even if the — be doubtful, to proceed to determine the suit.—*Ib.*

72. The representative of a deceased person may be sued in that Court within whose — the cause of action with the deceased person arose.—2 Hyde 18.

73. A, who has no regular office, but comes once or twice a week from the Mofussil to a friend's house in Calcutta, and sees people there on business, contracts with B in Calcutta for the hire of certain cargo-boats. While being towed by a steamer which A had chartered according to agreement, the boats, when beyond the — of the Court, sustain great damage by reason of gross negligence on the part of C, whom A had placed in charge. *Held* (1) that the "cause of action" did not arise in Calcutta; (2) that A "carried on business" in Calcutta within the meaning of s. 12 of the Charter; (3) that A must be held responsible to B for the negligence of C.—2 Hyde 79. *See* 16 W. R., O. J., 16.

74. A party, having a permanent residence at Dinapore, comes to Calcutta and resides there temporarily for the purpose of carrying on a suit. *Held* that he cannot therefore be said to *dwell* in Calcutta within the meaning of s. 12 of the Charter.—2 Hyde 117.

75. The Vice Admiralty Court has no — to arrest a British ship on a claim for repairs, although the owners may be Colonial subjects.—2 Hyde 255.

76. The mere use of the words "talookee kuboolcut" does not fix the — of the Court under Act X of 1859, but the substance of the claim is to be looked to.—3 R. J. P. J. 35.

77. The Civil Court has no — in a case of ejectment where the tenant ceased to hold as tenant by the act of the landlord.—3 R. J. P. J. 139.

78. A suit should not be dismissed for want of — by reason of the plaint having been presented to the wrong Court, but the plaint should be returned for presentation to the right Court.—W. R. Sp. 65.

79. A suit to recover possession should not be allowed to go on while an appeal from an order of non-suit relating to the same property and between the same parties is pending before the Privy Council.—W. R. Sp. 100.

80. After transfer of a suit from a Judge's to a Principal Sudder Ameen's Court, the Judge has no —, in the absence of the Principal Sudder Ameen, to substitute the name of another party for that of the original plaintiff as his legal representative on his death *pendente lite*.—W. R. Sp. 121.

81. In a suit for money against defendants living within its —, a Court may enquire into the proceeds of an estate situated beyond that —, in order to fix the amount payable to plaintiffs.—W. R. Sp. 167.

82. The Collector of Ghazeepore (N. W. P.) was held to have acted without — in trying under Act 1 of 1817 a dispute as to the boundaries of two Zillahs, one within and the other without the N. W. P., and was not a competent authority within the meaning of s. 14 Act VIII.—W. R. Sp. 191. *See also* 5 W. R. 211, 11 W. R. 389. *See* 16 W. R., P. C., 5.

83. A Principal Sudder Ameen has no — where the land in dispute is partly situate not within his —.—W. R. Sp. 203.

84. Possessory suits are maintainable in the Civil Courts where no forcible dispossession is alleged.—W. R. Sp. 213 (2 R. J. P. J. 309, L. R. 16).

85. A sharer of joint ancestral lands is not barred from suing in the Civil Court for the demolition of a house built on the land by his co-sharer without his consent, merely because he had first lodged a complaint in the Criminal Court against the same act.—W. R. Sp. 258.

86. Resumption proceedings are final and not liable to question by Civil Courts, except where extensive settlements are made with other parties after intermediate settlements, or acts are done without —, or lands taken not included in the original decree.—W. R. Sp. 273 (L. R. 56), 1 R. J. P. J. 228 (Sev. 788), 1 W. R. 255 (3 R. J. P. J. 326), 10 W. R. 103, 22 W. R. 48.

87. A suit for the price of trees cut down by the tenant and claimed by the landlord by right of usage is not cognizable under cl. 4 s. 23 Act X, but in the Civil Court.—W. R. Sp. 327.

88. A party has no right to bring a civil suit to get possession of land which has been taken from him and awarded to his adversary in the execution of a decree in a boundary suit.—W. R. Sp. 331 (L. R. 105), 14 W. R. 39.

89. No civil action will lie against the Court of Wards in respect of anything done by it regarding the person and education of any minor entrusted to its superintendence.—W. R. Sp. 332 (3 R. J. P. J. 86).

Nor against the Collector appointed guardian under s. 12 Act XL of 1858.—14 W. R. 113, 16 W. R. 268.

90. The adjudication contemplated by s. 14 Act VIII is effectual till reversed by a competent Court; and when it declares certain land to belong to a certain district, all actions regarding that land must be brought in the Courts of that —.—W. R. Sp. 360 (L. R. 133). *See* 11 W. R. 389.

91. An award of the Survey authorities is an award within the purview of s. 14 Act VIII; and as long as land remains demarcated by the Survey authorities as belonging to an estate in one district, the Court of another district has no — to entertain a suit in respect to it.—W. R. Sp. 369 (L. R. 142). *See* 11 W. R. 389 and 158 *post*.

92. A suit will not lie to enforce the execution of a decree in another suit. The Courts must be left to interpret their own decrees.—W. R. Sp. 376 (L. R. 150).

93. A suit by a zemindar to try the question of mokurrurec title of certain mokurrureedars who have recovered possession under s. 23 Act X after he had ousted them, is cognizable in the Civil Court.—W. R. Sp. (Act X) 4.

94. The Civil Court has no — in a suit for possession and mesne profits and damages in which the plaintiff's landlord was the substantial defendant as regards possession.—W. R. Sp. (Act X) 10. *See also* 14 W. R. 232. *But see* 140 *post*.

95. The Civil Court has no — in a suit for possession in which the landlord was one of the defendants and the real party interested.—*Ib.*

96. A suit between parties who, with their ancestors, had long held the land in dispute, and a claimant under a pottah recently granted by the zemindar, was held cognizable by the Civil Court.—W. R. Sp. (Act X) 17.

97. In determining whether a suit is cognizable by the Revenue or the Civil Court, respect must be had to plaintiff's allegation and not to defendant's plea.—W. R. Sp. (Act X) 25, 52.

98. Where a Collector exceeded his authority by deciding upon the genuineness of a deed of sale propounded by the plaintiff, his order was set aside by the High Court under s. 35 Act XXIII of 1861.—W. R. Sp. (Act X) 26.

99. Where a zemindar claims a right to enhance and evicts the ryot on his refusal to pay the enhanced rent, the Revenue Court has — to try whether or not the ryot has been rightly evicted.—W. R. Sp. (Act X) 30.

100. Suits for rent cognizable by a Collector under cl. 4 s. 23 Act X includes cases of tenancies not strictly agriculturable, provided the lease and rent are for *land*, whatever the purpose for which its surface is used.—W. R. Sp. (Act X) 46 (2 R. J. P. J. 210).

101. Where a *ganteedar*, on the suit of the putneedar, is ejected from his holding notwithstanding a right of occupancy independent of his *gantee*, an appeal lies to the Collector, whose order can only be questioned by a civil suit and not under s. 35 Act XXIII of 1861.—W. R. Sp. (Act X) 47.

103. A suit for excess rents collected under a lease under which the lessee was, in consideration of a certain sum of money, to pay the Government revenue and reimburse himself from the remainder of the assets, and which provided for annual measurement and assessment, was held cognizable in the Civil and not the Revenue Court.—W. R. Sp. (Act X) 53, 16 W. R. 173.

104. Disturbing or dispossessing the cultivators is in effect ejecting and disturbing in the receipt of rent the farmer to whom they pay rent, for which a suit will lie under cl. 6 s. 23 Act X.—W. R. Sp. (Act X) 54 (2 R. J. P. J. 216).

105. A suit for dispossession between two ryots is cognizable by the Civil Court only.—W. R. Sp. (Act X) 60, 61; 2 W. R. (Act X) 100.

106. A suit for arrears of rent of a *haut* is cognizable by the Revenue Court under cl. 4 s. 23 Act X.—W. R. Sp. (Act X) 78 (2 R. J. P. J. 354).

107. Cl. 6 s. 23 applies to suits brought by tenants against the person entitled to receive rents to settle the question of right to possession.—W. R. Sp. (Act X) 79 (2 R. J. P. J. 355).

108. A suit by a landlord to recover possession of land from a ryot who had ceased to pay rents, but whom he

JURISDICTION (*continued*).

had omitted to sue when he first ceased payment and set up an adverse title, is cognizable by the Civil Court.—W. R. Sp. (Act X) 80 (2 R. J. P. J. 358).

109. The Collector has — in a case where the zemindar opposes the entry of a purchaser of a transferable ryot's tenure.—W. R. Sp. (Act X) 81 (2 R. J. P. J. 360).

110. The finding of a Court cannot be questioned by a Court of concurrent —.—W. R. Sp. (Act X) 84 (2 R. J. P. J. 364).

111. In a suit for ejectment between rival tenants the — of the Civil Court is not barred by reason of an allegation by the ousting tenants of their holding a lease from the zemindar, or even of ratification of their acts by the zemindar.—W. R. Sp. (Act X) 89 (3 R. J. P. J. 16). *See* 239 *post.*

112. A case of ejectment comes within a Collector's — under cl. 6 s. 23 Act X only where there has been some direct act on the part of the person entitled to receive the rent.—W. R. Sp. (Act X) 90 (3 R. J. P. J. 17), 6 W. R. (Act X) 90.

113. A suit for a perpetual (*istemraree*) pottah cannot be tried under Act X.—W. R. Sp. (Act X) 94 (3 R. J. P. J. 24). *But see* 11 W. R. 541.

114. Where a zemindar sold a *mouroseе* tenure for arrears of rent and purchased it himself, and then evicted the dur-mouroseedar and made a fresh settlement for the tenure with a third party,—*Held* that a suit for ejectment by the dur-mouroseedar against the zemindar was cognizable under cl. 6 s. 23.—W. R. Sp. (Act X) 96.

115. A suit for rent by a putneedar, whose interest ceased before suit, is cognizable in the Collector's Court. —W. R. Sp. (Act X) 98 (3 R. J. P. J. 32).

116. The words "management of land" in s. 24 Act X are not confined to local agents or gomashtas, but may be extended to agents who are employed in giving leases and against whom a suit is cognizable in the Collector's Court. —W. R. Sp. (Act X) 99 (3 R. J. P. J. 36).

117. A suit to determine the rent of land with a house on it, does not lie in the Civil Court.—W. R. Sp. (Act X) 102 (3 R. J. P. J. 75). *See also* 5 W. R. (Act X) 60, 15 W. R. 463. *But see* 14 W. R. 246.

118. A Revenue Court, though competent to dispose finally of a question of dispossession, cannot pronounce a final opinion on the genuineness of a deed of sale adduced to prove the dispossession.—W. R. Sp. (Act X) 101.

119. A suit to recover possession as against a ryot will not lie under Act X. The only suits for recovery of possession cognizable under that Act are suits by a tenant who has been illegally ejected by the person entitled to receive the rent of the land or tenure.—W. R. Sp. (Act X) 108, 1 W. R. 196.

120. The Revenue Courts have no — to decide a boundary question between two estates. A landlord must first obtain a declaration in the Civil Courts that the land in dispute is within the limits of his estate, and then he may proceed to assessment upon it under Act X.—W. R. Sp. (Act X) 116.

121. A suit by coparceners of an *ijmalee* estate, who are also cultivators, to recover possession of their share of the estate, is not cognizable under Act X.—W. R. Sp. (Act X) 131.

122. A suit for the price of trees cut down and removed is not the less a suit for damages because the Court, in order to determine whether the plaintiff is entitled as damages to the value of his trees, has to go into evidence as to whether they belong to the plaintiff or not. Such a suit is cognizable by a Small Cause Court, and no special appeal will lie.—W. R. Sp., Mis., 3; 2 W. R. 179.

123. *Quære.* Whether a suit lies in the Civil Courts against the Chief Priests of the Lingayats by the Swami or Chief Priest of the Smartava sect of Brahmins claiming by grant from the supreme power of the State the privilege of *Adavi Palki*.—(P. C.) 6 W. R., P. C., 39 (P. C. R. 142).

124. *Quære.* Whether the Courts in India have any — to determine a question involving a mere declaration of a right to perform religious ceremonies.—(P. C.) 7 W. R., P. C., 7 (P. C. R. 163). *See* 11 W. R. 457.

125. The 9 Geo. IV c. 74 s. 56 applies only to the case of persons amenable to the Supreme Court at Calcutta beginning to commit offences in one place, which are afterwards completed in another, and not to a case where the persons committing the offence were not amenable to the said Court, and where the whole offence has been committed within one —.—4 W. R., P. C., 109 (P. C. 265).

126. A civil action was held to lie for the removal of an obstruction caused by defendant's building to plaintiff's right of way, in a case where the Magistrate issued no specific order but a general prohibition against the defendant encroaching on a public road, and the Judge passed no order on the matter, either in appeal or otherwise, but simply gave his opinion that the matter was one for the Civil Court.—1 W. R. 14.

127. A suit to recover rent on lease of tolls arising from a canal or river navigation is not cognizable under cl. 4 s. 23 Act X of 1859.—1 W. R. 15 (3 R. J. P. J. 136).

128. An act done by a Political Officer, interfering with the private rights of parties, can be questioned in the Civil Courts.—1 W. R. 16.

129. A suit for damages for mere verbal abuse, without actual injury and damage done, does lie in the Civil Courts. —1 W. R. 19, 7 W. R. 259, 8 W. R. 256, 16 W. R. 84 (*foot-note*). *See* 6 W. R. 151. *But see* 12 W. R. 369.

130. A co-sharer's suit for a kuboolеut, where tenancy has not been established, is not cognizable under Act X of 1859.—1 W. R. 42 (3 R. J. P. J. 158).

131. Suits for ejectment between landlords and tenants, whether under color of an Act IV award or otherwise, are alone cognizable in a Revenue Court under cl. 6 s. 23 Act X of 1859.—1 W. R. 42.

132. A suit by purchaser of a mokurruree tenure, to recover possession thereof and establish title thereto, is cognizable in the Civil Courts.—1 W. R. 48.

133. S. 23 Act X of 1859 is not applicable to a suit in which plaintiff claims as entitled to a moiety of the rent of certain land in the possession of his co-sharer.—1 W. R. 53. *See* 12 W. R. 418.

134. A Collector has — under ss. 9 and 10 Act VI of 1862 (B. C.).—1 W. R. 63.

135. A suit under s. 14 Act X of 1859 to contest a notice of enhancement, is cognizable by the Revenue Court, anything in cl. 3 s. 23 notwithstanding.—1 W. R. 72.

136. A suit for possession against an occupant by transfer, whom the landlord does not recognize as his tenant, is not cognizable in a Revenue Court under cl. 5 s. 23 Act X of 1859.—1 W. R. 86 (3 R. J. P. J. 186).

137. The dismissal of a suit for rent is no bar to a suit in the Civil Court for title and possession with mesne profits. —1 W. R. 99.

138. A suit between two rival lessees of a tank is cognizable by the Civil Court only.—1 W. R. 101.

139. Mere allegation of a rent-free title is not sufficient to bar the — of a Collector. —1 W. R. 135 (3 R. J. P. J. 220).

140. A suit by a ryot against a zemindar and others to recover possession with mesne profits, is not cognizable by the Collector under cl. 6 s. 23 Act X of 1859.—1 W. R. 138; 7 W. R. 155, 283; 13 W. R. 334.

141. A suit for illegal ejectment cannot lie under cl. 6 s. 23 Act X of 1859 where possession has not been had and the relationship of landlord and tenant not established.—1 W. R. 201 (3 R. J. P. J. 271).

142. S. 25 Act X of 1859 does not prevent a suit being brought in the Civil Court for possession with mesne profits. —1 W. R. 221.

143. The rent of a house and grounds attached, to the house, but not of lands at a distance, may be sued for in the Civil Court.—1 W. R. 223 (3 R. J. P. J. 276). *See* 11 W. R. 410, 14 W. R. 246. *But see* 15 W. R. 241, 463.

144. The Civil Court has — in a suit against an auction-purchaser for declaration of title and confirmation of possession on a mokurruree.—1 W. R. 228.

145. A suit for ejectment, where the defendant sets up a title as tenant to a rival zemindar, does not fall within cl. 5 s. 23 Act X of 1859, but is cognizable in the Civil Court.—1 W. R. 232 (3 R. J. P. J. 282).

146. A suit for possession of land is not excluded from the — of the Civil Court by reason of a former suit for rent in respect of the same land under Act X of 1859.—1 W. R. 235 (3 R. J. P. J. 282).

147. The Civil Courts have — to interfere with and set aside an order made by a Deputy Magistrate to open a road over lands.—1 W. R. 277.

148. The decree of a Court without — was allowed to stand where the party against whom it was given had acquiesced in the — exercised.—1 W. R. 279. *See* 13 W. R. 184.

149. When a Magistrate interferes with a private way, his acts, being beyond the scope of his —, may be set aside by a civil suit.—1 W. R. 324.

JURISDICTION (*continued*).

150. A Civil Court cannot, under s. 33 Act XI of 1859, entertain a suit for the annulment of a sale for arrears of revenue if plaintiff has made no appeal to the Revenue Commissioner in dissatisfaction of the sale.—1 W. R. 355. *See* 8 W. R. 439. *But see* 10 W. R. (F. B.) 66, 12 W. R. 311, 13 W. R. 336.

151. The High Court has no power to restrain by injunction, pending an appeal to the Privy Council, the exercise of an authority by the Court of Wards regarding the education of a minor under its superintendence, with which the High Court has declared itself incompetent to interfere. - 1 W. R., Mis., 7.

152. The Civil Court is competent, on the application of the Court of Wards, to carry out its own order passed in a former case (in which the Court of Wards was the defendant) declaring the Court of Wards entitled to the custody of a minor.—1 W. R., Mis., 27 (3 R. J. P. J. 314).

153. — of Magistrates to order maintenance of chowkeedar in possession of chakeran lands.—1 W. R., Cr., 12.

154. An unsuccessful claimant under s. 246 Act VIII to moveable property sold in execution, ought to sue in the Small Cause Court to establish his right thereto and recover the value thereof if less than 500Rs.—2 W. R. 44. *But see* 302 *post*.

155. Lakheraj, illegally alienated since 1790, may be sought to be resumed by suit in the Civil Courts, whose — is not affected either by s. 30 Reg. II of 1817 or s. 28 Act X of 1859.—(F. B.) 2 W. R. 91 (4 R. J. P. J. 65). *See also* 2 W. R. 258 (4 R. J. P. J. 200); 15 W. R. 440, 471, 483; (P. C.) 20 W. R. 459.

156. A suit to recover from defendant 235Rs. paid to him in excess of his share of the profits of certain lands, is cognizable in the Small Cause Court, and consequently no special appeal will lie in such a case under s. 27 Act XXIII of 1861.—2 W. R. 134.

157. A Civil Court has — in a suit for possession and mesne profits "by setting aside a pottah," the cancellation of the pottah being only a matter of consequential relief.—2 W. R. 157.

158. An award of the Survey authorities, where contested at the proper time and the accuracy of the award is the very question to be tried, is not an award of a Court of competent — within the meaning of s. 11 Act VIII of 1859.—2 W. R. 213.

Nor is an adjudication by the Revenue authorities an adjudication by a competent authority within the meaning of the same section.—11 W. R. 389, 12 W. R. 150.

159. Instalments of Government revenue paid by a mokurrureedar on account of his predecessor, provided they are not in excess of lease, being necessary payments made to save the estate from sale, are recoverable but not under Act X of 1859.—2 W. R. 262.

160. A civil suit will not lie to set aside an order of a Magistrate for the removal of a local nuisance under Act XXI of 1841, or under s. 308 Act XXV of 1861.—2 W. R. 267, 7 W. R. 11. *See* 335 *post*.

161. In a suit for property situated in two districts, A and B, where the Principal Sudder Ameen of A was permitted to try the case for the whole, and the plaintiff, *pendente lite*, withdrew his claim for the property situated in A, the Principal Sudder Ameen was held to have — to proceed with the suit as to the property situated in B.—2 W. R. 271.

162. A regular suit lies to the Civil Court from the proceedings of a Magistrate ordering the removal of an encroachment not treated as a local nuisance.—2 W. R. 287.

163. A landlord cannot get rid of the — of the Revenue Courts by merely refusing to take rent from the tenant or to acknowledge his rights.—2 W. R. (Act X) 3 (4 R. J. P. J. 19).

164. The Civil Court has — in a suit for ejectment in which the plaintiff expressly denies the existence of the relation of landlord and tenant, and treats the defendant as a trespasser.—2 W. R. (Act X) 4, 4 W. R. (Act X) 16.

165. Every Court having — over the subject-matter of a suit, incidentally has — (unless expressly barred by law) to try all pleas in bar urged in such suit. Consequently a plea of a mokurraree pottah and the denial of its genuineness do not necessarily bar the — of the Revenue Courts under Act X of 1859.—2 W. R. 11.

166. A suit to cancel a lease on account of breach of the conditions thereof under cl. 5 s. 23 Act X and for arrears of rent under cl. 4 is within the exclusive — of the Revenue Courts.—2 W. R. (Act X) 11.

167. A suit to cancel a lease, whether from year to year, for a term, or perpetual, on account of a breach of any conditions thereof, is, under cl. 5 s. 23, within the exclusive — of the Revenue Courts.—2 W. R. (Act X) 15.

168. A breach of contract made by farmer with zemindar to permit a sezawal to collect deficiency and to be responsible for loss, is no ground for action in the Revenue Courts. —2 W. R. (Act X) 45 (4 R. J. P. J. 144).

169. A ryot and a zemindar were sued by a party who held a pottah under the zemindar. The ryot, defendant alone appeals. *Held* that, though it was competent to the zemindar to object to the — of the Civil Court, it was not competent to the ryot to do so.—2 W. R. (Act X) 55.

170. *Quære*. Whether (the zemindar having retired from the contest, and the case involving a question of title between two ryots) it is not a matter to be tried by the Civil Court.—*Ib*. *See* 1 W. R. 313, 6 W. R. 293.

171. A suit for enhancement is liable to be dismissed if brought in Jessore in respect of lands situate in Furreedpore. —2 W. R. (Act X) 71.

172. The Civil Court has — in a suit which involves the right to collect rents as a sharer or deriving from a sharer. —2 W. R. (Act X) 72.

173. A suit by a putneedar to recover khas possession of land against a tenant who has sold his rights and interests to a third party, is cognizable only by a Revenue Court under cl. 5 s. 23 Act X.—2 W. R. (Act X) 75.

174. A suit against a ryot claiming to hold under a pottah from the same party from whom the plaintiff claims as purchaser, is not cognizable under Act X of 1859.—2 W. R. (Act X) 77.

175. A suit by an under-tenant claiming possession of land from which he has been dispossessed, whether it is brought against the zemindar or the auction-purchaser of the zemindaree rights, is properly brought under cl. 6 s. 23 Act X.—2 W. R. (Act X) 81; (P. C.) 13 W.R., P. C., 24. *See* 20 W. R. 155, 23 W. R. 460.

176. A suit for dispossession against a person not entitled to receive rent from the plaintiff, is not cognizable by a Revenue Court.—2 W. R. (Act X) 89.

177. A zemindar who has failed in a suit for resumption brought in the Revenue Court under s. 28 Act X, cannot sue in the Civil Court to try the same question over again; but he may sue in the Civil Court under s. 30 Reg. II of 1819 to try the validity of defendant's lakheraj title.—2 W. R. (Act X) 102, 3 W. R. 176.

178. A suit in the Civil Court for declaration of right to rent is not barred by previous dismissal of suit in Revenue Court upon plaintiff's failure to prove *de facto* possession as a landlord.—2 W. R. (Act X) 103.

179. A suit for possession, brought in reality by one lessee against the other lessees as coparceners in collusion with the zemindar, and not against the zemindar as landlord, is rightly brought in the Civil Court, and not before the Collector under cl. 6 s. 23 Act X.—2 W. R. (Act X) 105.

180. A suit by Government to recover what had been agreed to be paid as Government jumma between dates of resumption and settlement is cognizable only in the Civil Courts.—2 W. R. (Act X) 106.

181. A suit for damages against a cultivator who is a mere servant of the landlord, will lie in the Small Cause Court. But if the cultivator be a tenant to whom the landlord has sub-let the land, a suit will lie against him under Act X of 1859, for a portion of the crop as the rent or consideration for the use of the land.—2 W. R., S. C. C., 2 (S. C. C. 113).

182. A suit for cattle or value of cattle cannot lie in a Civil Court within the local limits of a Small Cause Court's —.—2 W. R., S. C. C., 5 (S. C. C. 117).

183. A suit upon an instalment-bond given for arrears of rent is cognizable in the Small Cause Court.—2 W. R., S. C. C., 5 (S. C. C. 118).

184. Also a suit by a judgment-debtor to recover money paid by him to be applied in satisfaction of a decree for rent, but not so applied.—*Ib*.

185. Even in cases in which a special appeal is forbidden by s. 27 Act XXIII of 1861, so much of a Lower Appellate Court's order as is without — may be set aside by the High Court under s. 35.—3 W. R. 24.

JURISDICTION (*continued*).

Where a special appeal was successfully objected to under s. 27, the High Court refused to treat the petition of appeal as an application to exercise its extraordinary powers, but simply rejected the appeal without prejudice to appellant's right to apply in proper form to have the Judge's order quashed as made without —.—20 W. R. 478.

186. An award by a Deputy Magistrate under s. 318 Act XXV of 1861 is not an award of a competent Court under s. 14 Act VIII of 1859.—3 W. R. 94.

187. A suit to recover money deposited with defendants to be applied in payment of rents (the deposit having been unsuccessfully pleaded in a suit for rent) lies in the Civil and not the Revenue Court.—3 W. R. 109.

188. A suit for profits of property alleged to have been appropriated by a wrong-doer lies in the Civil and not the Revenue Court.—3 W. R. 111.

189. The transfer of a suit for public convenience from one Subordinate Court to another does not affect a District Judge's authority to transfer it again if he see cause. —3 W. R. 147.

190. A suit for the ascertainment and demarcation of a shikmee talook is cognizable by the Civil Court, notwithstanding that it includes a claim for the assessment of rent thereon.—3 W. R. 154.

191. Civil Courts have — (Reg. X of 1822 notwithstanding) to entertain a suit for a declaration of plaintiff's right to a part of Pergunnah Shoosuing and to question an order of Government directing that portion to be separated from the zemindaree and managed by special agency.—3 W.R. 180, (*affirmed by F. B.*) 9 W. R. 426.

192. A suit by a zemindar to try the validity of a pottah put forward by a tenant in a suit for damages against the plaintiff's ijaradar, and which the plaintiff declared to be a forgery, is cognizable in the Civil Court.—3 W. R. 209. *See* 9 W. R. 586.

193. A judicial investigation of allegations and facts sufficient to guide the Court, should precede the admission or rejection of —.—3 W. R. 215.

194. A decree of a Revenue Court awarding arrears of rent for a certain year under a kubooleut against a ryot, does not bar the — of the Civil Court in the suit brought by him for a declaration of his title as lakherajdar in the same land.—3 W. R. 227.

195. A Collector has no — in a suit for ejectment brought by a lakherajdar under cl. 6 s. 23 Act X.—3 W. R. (Act X) 5.

196. A landlord can sue under Act X of 1859 for realizing the rents due to his tenant whose tenure he has taken into khas possession.—3 W. R. (Act X) 24.

197. A claim for a legal due or cess arising out of the privilege of selling *pân* on *hâut* days is cognizable in the Civil and not the Revenue Court.—3 W. R. (Act X) 158.

198. A suit will lie under Act X of 1859 for arrears of rent in respect of *jummâi* land on which no rent has been assessed, the rate being fixed according to the rates prevailing in the market for similar land.—3 W. R. (Act X) 159.

199. A suit for possession by a purchaser from a tenant whose right to sell is questioned by the zemindar, is cognizable only in the Civil Court, and not under cl. 6 s. 23 Act X.—3 W. R. (Act X) 161.

200. A Sessions Judge has — under the old procedure to pass any sentence (short of death) to which a prisoner is liable, subject to reference and to appeal.—3 W. R., Cr., 58.

201. The decision of a Revenue Court incidentally trying, for the purposes of a suit under Act X of 1859, a question of title, is not final, so as to bar a suit in a Civil Court to establish a title declared by the Revenue Court to be invalid.—4 W. R. 2.

202. A suit by one ryot against another for the value of sand carried away by the latter from the former's land is cognizable in the Civil Court.—4 W. R. 40.

203. The ordinary Civil Courts have — in a suit for the price of bricks carried away, after declaration of title to half the property; the suit being held to be one to establish a title to real property and obtain a declaration thereof.— 4 W. R. 58.

204. A suit for declaration of title under a mourosee lease is cognizable by the Civil Court and not by the Collector.—4 W. R. 105.

205. How regulated in suits against shikmee talookdars when they are or are not subordinate to the zemindar.— 4 W. R. (Act X) 41; 6 W. R. (Act X) 1.

206. A suit upon a contract for the payment of a stipulated sum per month to the owner for the leave granted by him to the defendant to use a path across his land, is cognizable by the Small Cause Court.—4 W. R., S. C. C., 10.

207. Whatever may be the amount of the bond registered under s. 51 Act XVI of 1864, if a sum not exceeding 500Rs. (whether for principal or interest) be due under it, a Small Cause Court has — to enforce payment.— 4 W. R., S. C. C., 11. *See* 6 W. R., C. R., 6.

208. A Magistrate cannot, under s. 62 Act XXV of 1861, interfere with the civil right of a landholder to establish *hauts* within his estate, and to hold them on any day most convenient to him.—4 W. R., Cr., 12. (*Over-ruled*) *See* 11 W. R., Cr., 5 (*affirmed by F. B.*) 18 W. R., Cr., 47.

Similarly a Magistrate was held to have — under s. 518 Act X of 1872.—20 W. R., Cr., 53; 21 W. R., Cr., 22. *See* 22 W. R., Cr., 24.

209. A suit will not lie for the declaration, as part of a formerly settled *mâl* estate, of land declared by a Resumption Court liable to assessment as a resumed invalid tenure and brought after such resumption on the rent-roll as an estate totally separate from the plaintiff's.—5 W. R. 22. *See* 86 *ante*.

210. A suit will lie to set aside an order of the Commissioner of Chota Nagpore directing the payment of Government revenue at a certain rate.—5 W. R. 47.

211. No suit will lie against a Magistrate for fining the plaintiff for illegally exacting tolls.—5 W. R. 104.

212. A claim to obtain a declaration of title to a share of the proper assessment of a purchased fraction of an estate is a claim to a right to possession and is only cognizable by a Civil Court.—5 W. R. 117.

213. Where a Principal Sudder Ameen's decision in a suit for more than 5000Rs., incorrectly estimated at less, has been appealed to the Judge, the Judge's order of remand, however erroneous, is operative until set aside.—5 W. R. 287.

214. A suit to recover possession on expiry of assignment, of land assigned over for a term of years as security for a loan, is cognizable in the Civil Court, and not under cl. 6 s. 23 or s. 25 Act X.—5 W. R. (Act X) 2.

215. A suit for moneys received and not accounted for during the agency of the defendant is cognizable only in the Revenue Court under s. 24 Act X, notwithstanding determination of the agency prior to the institution of the suit.—5 W. R. (Act X) 13. *See also* 10 W. R. 51.

216. A suit by tenant against landlord for confirmation of title and for possession by reversal of a summary award under s. 15 Act XIV of 1859, is cognizable only in the Revenue Court.—5 W. R. (Act X) 14.

217. A suit for enhancement of a julkur tenure is cognizable in a Revenue Court.—5 W. R. (Act X) 20.

218. A decree of the High Court deciding that a party may sue a farmer from whom he has obtained a kubooleut and barring a third party's claim, does not affect the — of the Revenue Courts to enquire who is in receipt of the rent and entitled to a decree under s. 77 Act X.— 5 W. R. (Act X) 25.

219. A suit to recover the rents of lands situate in various sub-divisions was instituted and decided in the Court of the Collector of the district within which the sub-division lay. *Held* that the Collector's Court had exercised its — irregularly, as the suit should have been instituted in a sub-division Court; but that as the Court had not acted wholly without —, the proceedings (which were otherwise substantially right) could not be set aside on appeal.— 5 W. R. (Act X) 29. *See* 12 W. R. 310.

220. A suit for rents which were due when a dur-putnee lease was granted, and for which the dur-putneedar covenanted to be liable in addition to the payments accruing, is cognizable by the Revenue Court.—5 W. R. (Act X) 34.

221. A suit lies under cl. 4 s. 23 in respect of the joint liability of the auction-purchaser at an execution sale with the original tenant for *kists* of rent accruing due after the purchase.—5 W. R. (Act X) 45.

222. Where a lease has been granted to a creditor towards liquidation of his claim, on condition that he pays the lessor's rents to the landlord, and on lessee's default lessor is obliged to pay the rents himself, a suit by lessor for the rents so paid is cognizable in the Civil Court only. —5 W. R. (Act X) 72.

223. S. 24 Act X gives the Civil Court no — in a suit by a zemindar to recover money received by his agent in

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collection of rents, where the agent received special directions as to the disposal of the money but misappropriated it.—5 W. R. (Act X) 79.

224. Suits for the rents of fisheries are provided for by cl. 4 s. 23 Act X.—5 W. R. (Act X) 92.

225. The High Court cannot restrain the Court of Wards, whether acting with or without —, from interference in the bestowal in marriage of a minor. Proper course to be taken by the parties aggrieved.—5 W. R., Mis., 41.

226. A suit will not lie for damages caused by destruction of indigo plants in execution of an award under s. 15 Act XIV, nor for costs awarded by a competent Court in a possessory suit under the same section, nor for damages in the shape of the value of *kalai* crop recovered by the decree of a competent Court.—5 W. R., S. C. C., 1.

227. The High Court cannot declare that the Sessions Judge acted illegally in making observations upon the merits of a case with which he had no power to interfere. —5 W. R., Cr., 2.

228. To give jurisdiction at Patna, under s. 31 Act XXV of 1861, in respect of an offence committed in Calcutta, viz., receiving stolen property, the finding must be that the property was stolen at Patna.—5 W. R., Cr., 49.

229. The — of a Magistrate competent to try the offence charged is not affected by the previous conviction of the prisoner.—5 W. R., Cr., 53.

230. A Deputy Magistrate has no — under s. 320 Act XXV of 1861 to order ditches once forming a pathway but afterwards filled up to be opened, without proof that the use of the ditch and pathway was open to the public or to the prosecutor.—5 W. R., Cr., 57.

231. Where a person, with the knowledge of the zemindar, purchased a half share in a transferable tenure, and the zemindar chose to treat the owner of the remaining half as though he were still the owner of the whole with a view to injure the new tenant, a suit was held to lie in the Civil Court against the zemindar as well as against the vendor, although the formal act of registration had not been gone through.—6 W. R. 179.

232. A suit by a co-sharer of a shikmee talook for a partition of his share is cognizable in a Civil Court, even without the consent of the landlord, when the partition is asked to be made only between the co-sharers, and is not to be binding upon the landlord, who is not a necessary party in such a case.—6 W. R. 192, 9 W. R. 487.

233. In a Court where the concurrence of two or more Judges is necessary to a judicial determination, their minds must be brought together, and their opinion expressed. If they differ in opinion on points of law and do not state those points, there is no determination of the case, which, if referred to other Judges, may be gone into by them fully.—6 W. R. 269.

234. A Small Cause Court has — only as regards arrears of fixed maintenance but not to determine the right to receive it.—6 W. R. 285. *But see* 24 W. R. 474.

235. A suit (valued at 500Rs.) for specific performance of contract is not cognizable by a Small Cause Court, and consequently no special appeal will lie in such a case.—6 W. R. 322.

236. Civil Courts cannot compel Hindoos, against their will, to ask other Hindoos to their houses or their entertainments.—6 W. R. 325.

237. A suit for contribution (below 500Rs.) to recover money paid as revenue by one co-sharer to save the whole estate from sale, is cognizable by a Small Cause Court, and therefore no special appeal will lie under s. 27 Act XXIII of 1861.—6 W. R. 325. (*Over-ruled*) *See* Small Cause Court 14, 17.

238. A suit to set aside a collusive decree for rent under which plaintiff was ejected and his crops seized, is cognizable by the Civil Court and is distinguishable from a case of illegal distraint under cl. 7 s. 23 Act X.—6 W. R. (Act X) 7. *See also* 7 W. R. 41.

239. A suit by a ryot who has been dispossessed of his holding, against his lessors and two other ryots claiming under a lease granted to them by the lessors, should be brought in the Civil Court.—6 W. R. (Act X) 19; 8 W. R. 303; 10 W. R. 49; 14 W. R. 232.

240. A suit to recover damages for an illegal distraint of the plaintiff's crops is properly brought in the Revenue Courts.—6 W. R. (Act X) 33.

241. A suit will not lie in the Civil Court to set aside an order by a Collector, made under s. 27 Act X, for the registration of the names of the defendants as shikmee talookdars in the plaintiff's sherista.—6 W. R. (Act X) 67. (*Over-ruled by F. B.*) 12 W. R. F. B. 30.

242. In a suit for a kuboolent, the Collector ought to confine himself to the matter of the kuboolent and to the previous receipt of rent; but his going beyond his — and trying the question as to whom the land belongs, will not oust the Civil Courts from their —.—6 W. R. (Act X) 93.

243. A suit for money forcibly taken from plaintiff by defendant will lie in the Civil Court, notwithstanding defendant's acquittal in the Criminal Court on a charge of robbery.—6 W. R., Cr., 26.

244. A Magistrate cannot, under s. 62 Act XXV of 1861, in general terms forbid two parties to use any musical instrument in the neighbourhood of each other's house, though he may forbid their doing so for the purpose of mutual annoyance.—6 W. R., Cr., 40.

245. In a suit for rent where payment by a *burrat* or assignment is pleaded and execution of the *burrat* proved, the Revenue Courts have — to try the question of *burrat*. —7 W. R. 25.

246. A plaintiff is not barred from suing for a declaration of his civil rights to land encroached upon and included within a public road by a Magistrate's order.—7 W. R. 47.

247. The Civil Courts have — to entertain a suit which, if successful, will have the effect of setting aside and rendering inoperative an order of a Magistrate passed under s. 308 Act XXV of 1861 declaring a road to be a public one and directing the removal of bamboo posts across the road as an obstruction.—7 W. R. 95. (*Over-ruled by F. B.*) 12 W. R. F. B. 18.

248. In suits for rent of excess lands whether liable to assessment under s. 17 Act X or otherwise.—6 W. R. (Act X) 19, 57, 97, 106; 7 W. R. 122.

249. A Collector has no — under s. 20 Act VI of 1862 (B. C.) to allow a suit to be instituted in the Sudder station instead of in the Sub-division Court. Where he wrongly exercises such — in a case below 100Rs., either the Judge may be moved to set aside the order, or the High Court to order proper legal proceedings.—7 W. R. 170. *See also* (F. B.) 477 *post*. *See* 8 W. R. 506, 12 W. R. 310.

250. Cl. 6 s. 23 Act X does not prevent Civil Courts from trying questions of title, but refers only to possessory actions against persons entitled to receive the rent.— (F. B.) 7 W. R. 186. *See* 8 W. R. 68, 96, 337; 10 W. R. 325; (F. B.) 19 W. R. 322.

So as to s. 27 Act VIII of 1869 (B. C.).—20 W. R. 455; 21 W. R. 53, 251; 23 W. R. 460.

251. Where a ferry previously held under private management has been declared to be a public ferry by the Government under s. 3 Reg. VI of 1819, an individual claiming compensation for the loss alleged to have been sustained by him in consequence of the extension of the authority of the Government, cannot maintain an action in the Civil Courts to enforce his claim.—(F. B.) 7 W. R. 191.

252. Where a plaintiff sued in the Court of B for the recovery of certain lands and the defendants objected that the lands in question were not in the district of B, the Court had power, under s. 14 Act VIII, before it proceeded to try the suit, to enquire and determine whether the lands were in B or not.—(F. B.) 7 W. R. 200. *See* 11 W. R. 389.

253. The rejection of a plaint under the same section cannot give — to a Court which does not otherwise possess it.—(F. B.) *Ib.*

254. As a general rule, a suit cannot be brought in a Civil Court to enforce a decree of a Revenue Court under Act X of 1859. Such decrees can be enforced only by execution, and the limitation for proceedings to execute them is defined by Act X itself. If, however, the execution-debtor and creditor contract that the creditor shall withdraw the execution and the debtor pay by instalments, on default of payment by latter such a suit will lie on the new contract; but not if the contract provides that, on default of payment, execution shall proceed.—7 W. R. 216. *See* 13 W. R. 151.

255. The Court of Wards has authority, under s. 10 Reg. X of 1793, to determine the remuneration to be given to a manager of an estate under its charge, and the Civil Courts cannot question its arrangements.—7 W. R. 221.

256. The expression "Principal Court of Original Civil — in the district," as used in Act IX of 1861, means the Principal Court of *Ordinary* Civil —.—7 W. R. 321.

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257. The word "dwell" in s. 8 Act XI of 1865 must be used in the sense of a permanent residence from which a man may be temporarily absent but to which he has an intention of returning. Thus where a man was temporarily imprisoned beyond the Court's —, but had his fixed residence and his wife and family within it, he was held to be within the — for the purpose of a suit under that Act.—7 W. R. 349. *See* 16 W. R. 240.

But not so a man who was employed as a domestic servant at M but had his family residence at K.—7 W. R. 417.

258. An Assistant Commissioner in Chota Nagpore, with powers of a Sudder Ameen, has no power to try a suit valued at 2800Rs., but it is cognizable by a Deputy Commissioner who has the powers of a Principal Sudder Ameen.—7 W. R. 356.

259. A suit for the value of rice received as rent by an agent will lie under s. 24 Act X.—7 W. R. 415.

260. A suit by a gomashta for excess expenses incurred by him over and above the amount of rents collected by him, is cognizable in the Small Cause Court, notwithstanding that the nature of the defence may render it necessary to investigate the accounts of the mehal.—7 W. R. 422.

261. A jotedar or ryot having a right of occupancy, evicted by a Collector in favor of the person entitled to receive rent from him upon intervention under s. 77 Act X, may sue in the Civil Court for title and possession.—7 W. R. 471.

262. A suit for rent is cognizable only by the Collector under cl. 4 s. 23 Act X, whether based upon a kuboolcut or not.—7 W. R. 473.

263. A Magistrate has no — to try, but must commit to the Sessions, a case of perjury committed before him in the course of a proceeding taken under s. 318 Act XXV of 1861.—7 W. R., Cr., 104.

264. A suit will lie in the Revenue Court for ground rent when, though it is included in the house rent, it may be separated from it.—8 W. R. 90. *But see* 11 W. R. 203.

265. Where A lends money to B on bonds payment of which was secured by assignment of the rents of B's estate, and instead of liquidating them from collections of the estate assigned, sues on the bonds and obtains a decree, and B sues for refund of collections, B's is not a suit for rent and must be tried in the Civil Court.—8 W. R. 128.

266. Every order passed by a Court is not void for want of — simply because it is illegal, as where a Court remands a case under s. 351 instead of s. 355 Act VIII.—8 W. R. 207.

267. S. 308 Act XXV of 1861 refers to nuisances in a thoroughfare or public place, and has nothing to do with the interior of private houses, and therefore does not bar the — of the Civil Courts in a suit brought to set aside an order of a Deputy Magistrate restricting some of the owners and occupiers of a house from the free use of their own portion of joint property.—8 W. R. 239.

268. The Civil Courts have no — in a suit under Act X where plaintiff's allegation of fraud means only that defendant has obtained something he is not entitled to.—8 W. R. 290.

But see as to a fraudulent sale.—13 W. R. 32.

269. A suit to have a lease granted by the manager of plaintiff's estate while it was under the charge of the Court of Wards declared null and void, does not fall within cl. 5 s. 23 Act X merely because plaintiff mentions that a balance of rent is due by defendant, but is cognizable by the Civil Court.—8 W. R. 368.

270. Act X of 1859 does not empower a Collector to try questions relating to land depending on equitable rights or liabilities arising from circumstances other than those of the relationship of landlord and tenant, *e.g.* whether, under particular circumstances, other persons than the actual tenants of the land might not, according to the rules of equity, be liable to pay the rent of that land.—(F. B.) 8 W. R. 428. *See* 275, 374, 471 *post; also* 11 W. R. 120, 406; 13 W. R. 390, 469; 14 W. R. 12; 16 W. R. 82, 233; 18 W. R. 35, 136.

271. A suit for arrears of rent under cl. 4 s. 23 Act X may be entertained by the Collector both against the lessee and his surety.—8 W. R. 452. *But see* 11 W. R. 407.

272. *Semble.* A suit for the delivery of accounts under s. 24 Act X will lie against the heir of an agent.—8 W. R. 481.

273. A suit by a zemindar against a putneedar for dâk expenses is cognizable by a Small Cause Court, and no special appeal will lie.—8 W. R. 517, 9 W. R. 518.

274. The necessity of a Court showing — on the face of its proceedings, pointed out.—8 W. R., Cr., 45.

275. A Collector may decree arrears of rent against the real lessees in possession, although no rents have been previously realized from them, and no written agreement has been executed in their names, and the ostensible holder does not deny liability.—9 W. R. 71. *See* 14 W. R. 12, 18 W. R. 35.

276. In a suit by lessee for damages, where the plaint shows a distinct prayer for abatement of rent, and sets forth as the main ground of suit a fraudulent breach of contract, so much of the claim as refers to abatement is beyond the — of the Civil Court, but the rest is cognizable by it.—9 W. R. 92. *See* 292 *post.*

277. Residents of Sinchal and Jullapahar, who are amenable to the Mutiny Act, are not amenable to the Small Cause Court of Darjeeling.—9 W. R. 112.

278. "Place" in s. 99 of the Mutiny Act is not used in the limited sense of a fortified town or fortress; and Sinchal and Jullapahar being places in India beyond the — of the Calcutta Small Cause Court, actions by such residents as aforesaid are cognizable only by a Military Court of Requests.—*Ib.*

279. A suit for buffaloes pledged under an *ikrar* is not a suit within s. 6 Act XI of 1865, and is not cognizable by a Small Cause Court.—9 W. R. 136, 16 W. R. 58.

280. A suit for damages on account of certain paddy distrained by a zemindar, between whom and plaintiff there is no relation of landlord and tenant, falls either under s. 139 or s. 143 Act X and comes under s. 23, and is cognizable only by a Revenue Court and not by a Small Cause Court.—9 W. R. 162. *See also* 11 W. R. 539, 15 W. R. 481.

281. A suit by a Hindoo widow for arrears of maintenance fixed by a decree of a Civil Court, is not cognizable by a Small Cause Court.—9 W. R. 214. *See also* 24 W. R. 471.

282. The withdrawal of a suit barred by limitation is a binding consideration for a promise to pay a certain sum of money, for the recovery of which a suit will lie in another Court; but such other Court cannot enquire into the question as to whether the withdrawn suit was barred by limitation or not.—9 W. R. 216.

283. A Principal Sudder Ameen has no — to interfere, at the instance of a third party, for the release of property attached by the High Court pending an appeal to the Privy Council.—9 W. R. 269.

284. In a suit for rent paid in kind, in which defendant disputed plaintiff's share but not his right as landlord, and in which intervenors denied the — of the Civil Court, pleading that defendant was their tenant.—9 W. R. 287.

285. The right of a zemindar to sue an agent under s. 24 Act X for accounts and papers, is not affected by the former being one of several shareholders.—9 W. R. 344, 10 W. R. 495.

286. A suit to recover money paid as price of land in consequence of vendor's failure to complete the bargain by registration of the deed of sale, is substantially a suit for breach of contract for sale of land, and is maintainable in a Small Cause Court.—9 W. R. 498.

287. Revenue Courts have no — in a suit to recover arrears of rent at an enhanced rate from a tenant to whom land has been leased for the express purpose of building a school and a church.—9 W. R. 552. *See* 10 W. R. 403.

288. The — of a Court of justice as to a cause of action depends upon the nature of plaintiff's claim, and not upon defendant's defence.—9 W. R. 598.

289. A suit by a zemindar to get possession of a holding on the ground that defendant who paid a varying rent refused to come to terms with his landlord and claimed to hold from before the Decennial Settlement at a fixed quit-rent, is cognizable by the Revenue Courts under s. 16 Act X, and not by the Civil Court, which has no — to apply the presumption arising from the payment of a uniform rate of rent.—9 W. R. 605

290. The Magistrate alone, and not the Sessions Judge, has — to convict under s. 29 Act V of 1861.—9 W. R., Cr., 36.

291. Civil Courts have —, under s. 25 Reg. IV of 1793, to punish resistance of their processes, without reference

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to the Magistrate.—9 W. R., Cr., 63. (*Over-ruled*) *See* 314, 320 *post.*

292. A suit brought not simply for an abatement of rent, but also for specific performance of a contract to refund, under certain conditions, excess of rent and of consideration-money, is not a suit for abatement of rent, and is cognizable by the Civil Court.—(F. B.) 10 W. R. F. B. 41. *See* 16 W. R. 173.

293. Where a naib, without authority from his principal, had collected rents from ryots, and the principal's suits to recover his rents from the ryots were dismissed with costs in consequence of the naib's admission that he had received the money sued for, it was held that a suit against the naib and another acting in collusion with him, to recover the moneys collected, and damages, was cognizable by the Civil Court.—10 W. R. 7.

294. A suit for a decree to break up and resume certain thatched huts or obtain their value to the extent of Rs. 29-4 is not a claim to real property, but comes under s. 6 Act XI of 1865, and thus, by s. 27 Act XXIII of 1861, no special appeal will lie.—10 W. R. 29. *But see* 306 *post.*

295. A suit to recover rents collected by a tehseeldar bound by an agreement under security is cognizable only under s. 24 Act X and not in a Small Cause Court.—10 W. R. 83. *See also* 14 W. R. 53.

296. A suit for damages on account of a false and malicious charge brought against plaintiff in a Criminal Court, is not cognizable by a Small Cause Court.—10 W. R. 115. *See* 12 W. R. 477, 13 W. R. 276. *But see* 12 W. R. 372, 13 W. R. 434.

Defamation of character being a personal injury, and "actual pecuniary damage" (as used in s. 6 Act XI of 1865) having reference to pecuniary loss to property or estate but not to personal injury.—13 W. R. 118.

297. The Revenue Courts have — in a suit for abatement of rent, where the holding has diminished since the tenant received possession from the landlord, whatever the cause of the diminution, and whether the effect was or was not absolute destruction of the subject.—10 W. R. 120.

298. A suit to compel a defendant to fill up an excavation or to pay 25Rs. is cognizable by a Small Cause Court. It is a suit for damages and the Court cannot be ousted of its — by reason of plaintiff asking for an alternative relief to which he is not entitled.—10 W. R. 130.

299. A suit stated in the plaint to be for possession and mesne profits, but which was in reality for recovery of possession and arrears of rent, was held to fall within Act X of 1859 and to be cognizable only in the Revenue Court.—10 W. R. 134.

300. A Small Cause Court cannot entertain a suit of the nature of a suit to establish a right. Thus a decree-holder cannot sue in a Small Cause Court to establish his judgment-debtor's title to property seized in execution and which has been subsequently released to a claimant under s. 246 Act VIII.—10 W. R. 141, 13 W. R. 99. *See* 18 W. R. 337.

301. A suit against an Agent to the Governor-General on the part of Government is substantially a suit against Government, and ought, under s. 9 Act XI of 1865, to be brought in a Court having — at the seat of Government.—10 W. R. 142. *See* 11 W. R. 233.

302. The — given to Collectors by s. 27 Act X is not exclusive but concurrent; Civil Courts having cognizance, under s. 1 Act VIII, of all suits to enforce rights of a civil nature, unless expressly barred.—10 W. R. 197.

303. A claim to recover the value of a share in certain produce raised under a contract does not come within the meaning of s. 10 Act X and may be enforced by a Small Cause Court.—10 W. R. 203.

304. Where, on application for the appointment of a manager to a deceased Rajah's estate, a Zillah Judge, notwithstanding a contention as to extent of minor's interest, passes an order strictly within the provisions of s. 12 Act XL of 1858, his successor acts without — in specifying the shares of the minor.—10 W. R. 218.

305. In a suit against an English woman living with her husband, the husband must be sued, and the Small Cause Court has not — if the husband be not living within its local limits.—10 W. R. 240.

306. A suit by an auction-purchaser to recover thatched huts sold in execution of a decree or their value is not cognizable by a Small Cause Court as a suit for moveable property within the meaning of s. 6 Act XI of 1865.—10 W. R. 258, 416; (F. B.) 17 W. R. 309.

So also when claimed as goods and chattels under s. 88 Act IX of 1850.—20 W. R. 8.

307. In a case decided by a Deputy Collector, an appeal was preferred to the Collector, who rejected it as having no —. An appeal was then preferred to the Judge, who also rejected it on the ground of want of —, and referred the parties to the Collector. The Collector accordingly tried the case; but his proceedings were quashed by the High Court as having been taken without —. The parties then applied to the Judge for a review of his order, which he refused to grant, suggesting an appeal. They accordingly filed an appeal, and the Judge reversed the order of the Deputy Collector. *Held* that the Judge might have admitted the application for review; but not having done so, he was at liberty to treat the appeal as one filed after time on having sufficient reasons assigned for the delay.—10 W. R. 334.

Where a review is admitted without legal reason, the judgment passed on review is passed without — and may be reversed in appeal.—22 W. R. 268.

308. Where the first Court found in favor of plaintiff that the land in dispute was in Rungpore and gave him a decree, and the Judge of that district on appeal found, in reversal of that decree, that the land was an accretion to an estate in Gowalparah,—*Held* in special appeal that the first question for the Judge to decide, under s. 14 Act VIII, was whether the land was within the local — of his Court.—10 W. R. 335.

309. A Small Cause Court has no — under s. 6 Act XI of 1865 to set aside a former decree on the ground of its having been passed without —, such want of — not being apparent on the proceedings of the suit.—10 W. R. 352.

310. A native camp follower attached to a European regiment is amenable to the Mutiny Act and not to any Civil Court.—10 W. R. 386.

311. Persons who act honestly in initiating proceedings in a Magistrate's Court cannot be held civilly responsible for any order which the Magistrate may pass in the case, whether it lies within his — to make such order or not.—10 W. R. 409.

312. Where a zemindar refuses to receive the amount of rent deposited by a ryot under Act VI of 1862 (B. C.) on the ground that the rent due is less than the amount deposited,—*Held* that the Collector had no — to go into an enquiry as to the quantity of land held by the ryot and the circumstances under which he had been ejected.—10 W. R. 423.

313. Under s. 20 Act VI of 1862 (B. C.), all proceedings under s. 10 must be taken in the Revenue Office of the sub-division, where a sub-division has been placed under the — of a Deputy Collector.—10 W. R. 454, 12 W. R. 310. *See* (F. B.) 177 *post.*

314. The resistance of process of a Civil Court is punishable by the Criminal Courts.—(F. B.) 10 W. R., Cr., 43.

315. Where a case is committed to a Magistrate under s. 277 Act XXV of 1861, he alone has —; he cannot commit to the Sessions on the ground of the inadequacy of the punishment which he is empowered to inflict.—10 W. R., Cr., 50.

316. A suit for arrears of rent at an enhanced rate, in a kubooleut in which defendant had agreed to pay a fixed rent for plaintiff's share of the estate with a further stipulation that he was to measure and enhance the rents of the ryots and pay over to the zemindar half the enhanced rent, is cognizable by a Revenue Court.—11 W. R. 7.

317. The value of mangoes (and other crops) stipulated for a part of the rent in kind, is realizable in a Revenue Court.—*Ib.*

So also under Act VIII of 1869 (B. C.).—25 W. R. 140.

318. A Magistrate has no — to issue a warrant of arrest against a defaulting lessee of tolls who does not appear to a summons issued for his appearance.—11 W. R. 26.

319. A suit for a declaration of right to the produce of trees planted by a person whose rights had been sold to plaintiff, is cognizable by the Civil Court, and not under cl. 6 s. 23 Act X.—11 W. R. 52.

320. A Mofussil Small Cause Court has no — to punish for resistance of a process which it has issued; but such resistance being an offence under s. 186 Penal Code, it may, under s. 171 Act XXV of 1861, send the accused before a Magistrate to be dealt with according to law.—11 W. R. 62.

JURISDICTION (*continued*).

321. A suit by a widow for personal property below the value of 500Rs. said to have been taken from her deceased husband during his lifetime, is cognizable by a Small Cause Court under s. 6 Act XI of 1865.—11 W. R. 93.

322. A ryot cannot sue in the Civil Court to set aside a decision of a Revenue Court passed in a suit brought by the landlord against the ryot to obtain a kubooleut.—11 W. R. 96.

323. Under cl. 5 s. 23 Act X a landlord's right to eject a ryot can be enforced only through the Revenue Court: the refusal of such Court to aid the landlord, even if erroneous, does not give — to the Civil Court.—11 W. R. 147.

324. Where a District Court has — and defendant neither applies to the Judge nor communicates with plaintiff with a view to the suit being tried in a different district, the High Court will not exercise any special power under s. 6 Act VIII.—11 W. R. 189.

325. S. 12 Act XI of 1865 does not take away the — of the ordinary Civil Courts in a suit against Government, because such suit is not cognizable by a Small Cause Court under s. 9.—11 W. R. 233.

326. A Small Cause Court has no — to try a suit on a bond in which land was hypothecated as security.—11 W. R. 276. *But see* 342 *post*.

327. A suit to recover fines levied from pupils in Government schools is not cognizable by a Small Cause Court.—11 W. R. 359.

328. A suit for arrears of rent and cancellation of a lease where the land (part of a hill) had been leased for the purpose of quarrying stone, with a small area required for the huts of the stone-cutters, does not fall within the purview of cl. 4 s. 23 Act X.—11 W. R. 400.

329. The Revenue Court was held to have no — in a suit for enhancement where plaintiff and defendant having been co-sharers in a village, defendant's dwelling-house was by a subsequent butwarra included in plaintiff's share, and the Collector under s. 9 Reg. XIX of 1814 directed that they together with other adjacent land should be retained by defendant on payment of a specified annual rent.—11 W. R. 410.

330. Where plaintiff, finding that land leased to him fell short of the specified quantity and that defendant notwithstanding realized the full rent, obtained an abatement under Act X and sued for a refund of the excess levied between date of possession and the Act X decree,—*Held* that the Small Cause Court had no — in the case; and that if the suit lay at all, it would be a suit for an illegal exaction of rent cognizable only in the Revenue Courts.—11 W. R. 412. *See* 16 W. R. 173.

331. A Civil Court is not competent to declare a road which has been opened by order of the Magistrate, to be no thoroughfare, and to direct that it be closed.—11 W. R. 434. *See* 335 *post* and 14 W. R. 163.

But the Civil Courts have — in a suit to have a pathway closed when there is nothing to show that the road was a public thoroughfare or that the order of the Magistrate directing the path to be opened was passed under s. 308 Act XXV of 1861.—19 W. R. 426.

And the Civil Court can take cognizance of an ejectment suit brought on the allegation that defendants have dispossessed plaintiff of private property under color of a Magistrate's order passed under s. 308 Act XXV of 1861 for the opening of a road which was not a public road, plaintiff not having been a party to those proceedings.—22 W. R. 461.

332. A landlord cannot sue in the Civil Court to recover mesne profits, which is a compensation for wrong done; he can only sue in the Revenue Court for rent, which is the value of lawful possession.—11 W. R. 501.

333. A person who carries on business at a place by a commission-agent to whom he only consigns goods, is not a person who can be said, under s. 8 Act XI of 1865, to carry on business or personally work for gain within the local limits of a Court where the commission-agent resides.—11 W. R. 580.

334. A suit by a proprietor of land for an *etmami* kubooleut from his tenant at the prevailing rates is cognizable only by the Revenue Court.—11 W. R. 541.

335. An order passed by a Magistrate for the removal or suppression of nuisances under Chapter 20 Act XXV of 1861 cannot form the subject of a suit or be set aside by a Civil Court.—(F. B.) 12 W. R. F. B. 18. *See* 15 W. R. 293; 21 W. R. 126, 391.

336. Defendant was not allowed to object as to —, where, on his own application, the case was transferred from a Mofussil Court to whose — he was not subject, to the High Court to whose — he was admittedly liable. The law applicable to the case if tried in the Mofussil Court, and if tried in the High Court.—12 W. R., O. J., 13.

337. A suit for rent from a party holding lands as *zerat* in his own exclusive possession is one for rent as between landlord and tenant, and cognizable only by the Revenue Court.—12 W. R. 4.

338. Cl. 5 s. 23 Act X does not apply to the case of a ryot holding on after the expiry of a contract or without any contract at all; the suit to eject him is cognizable only by the Civil Court.—12 W. R. 37.

339. A Judge has no — to entertain a petition from, and order the release of, a judgment-debtor imprisoned in execution of a decree, while the execution proceedings are before the Subordinate Judge.—12 W. R. 65.

340. In a suit to establish a claim against certain properties mortgaged to plaintiff but situate in different districts, one of the defendants who was interested in part of the properties which lay in the district of Moorshedabad was held not entitled to object in appeal that because a portion of the properties in dispute was situated in the district of Beerbhoom, the Subordinate Judge of Moorshedabad had no — to try the case without obtaining the permission of the High Court as provided by s. 12 Act VIII.—12 W. R. 114.

341. The — of a Magistrate under s. 308 *et seq.* Act XXV of 1861, in regard to the removal of obstructions to thoroughfares, cannot be taken away and given to a Civil Court.—12 W. R. 160. *See* 14 W. R. 177. 15 W. R. 293, 21 W. R. 145.

Quære. Whether the objection can be taken after decree in special appeal.—21 W. R. 413.

342. In a suit for money due on a bond in which the payment is secured by mortgage of immoveable property, a Small Cause Court can try whether any debt is due upon the bond or not, but it cannot declare whether or not the particular land mentioned in the bond is charged for the payment of the debt, nor can it attach the land in execution of the decree.—12 W. R. 184. *See also* 12 W. R. 367, 14 W. R. 214, 15 W. R. 311.

343. Plaintiff held an under-tenure within a jote-jumma held by B within D's zemindaree, and, under an assignment from B, paid D a sum of money as rent due by B to D. D afterwards recovered the rent from B by a separate suit in which no plea of payment was raised; and B also recovered his due from plaintiff by a separate suit in the Collector's Court. *Held* that an action was not maintainable in the Small Cause Court against D, and that, in the absence of authority from B to plaintiff to set-off his payment to D against the rent due to B, the Collector had no — to try whether B owed the plaintiff a sum equal to the rent, and that the Small Cause Court could try whether plaintiff did pay money for the use of B at B's request, and if so, give plaintiff a decree for the same.—12 W. R. 190.

344. A Civil Court has no — to enquire into a public right *per se*, *i.e.* as to the opening or closing of a public road, abstractedly and otherwise than as collaterally to a suit arising out of a private injury.—12 W. R. 199. *See* 12 W. R. 275, 14 W. R. 163.

Quære. Whether the objection can be taken after decree in special appeal.—24 W. R. 413.

345. The depositing of a sum of money by the lessee with the lessor as security for the payment of the rent, does not remove a suit for rent from the — of the Revenue Courts.—12 W. R. 214.

346. A claim for *huq-i-zemindaree* is not cognizable under Act X.—*Ib.*

347. A suit by a manager of an estate to recover advances made to a naib for the construction of a bund or the payment of salaries of tehseeldars and peadahs is cognizable under s. 24 Act X.—12 W. R. 269.

348. If any part of the property in suit be within the — of a Court, that Court has — to try the whole case on obtaining possession from the District Court under s. 11 Act VIII. S. 14 does not apply to such a case, but only to a case in which the question is whether the whole property is within or without the —.—12 W. R. 328.

JURISDICTION (*continued*).

349. S. 10 Act VI of 1862 (B. C.) merely empowers Revenue Officers to decide the rate of rent which a tenant is paying, but not to declare that rent at a certain rate shall be paid simply because rent at that rate has been paid by the tenants of neighbouring lands.—12 W. R. 371. *See also* 15 W. R. 243, 22 W. R. 476.

350. In a suit for rent where plaintiff alleges that the original landlord's assignment of the rents in consideration of a loan from his tenant has dropped, the Revenue Court has — to enquire into the allegation.—12 W. R. 381.

351. A Deputy Collector's order under s. 54 Act X, striking off a case appointed for re-hearing, annuls the decree, and the Collector's order directing execution is without —.—12 W. R. 406.

352. A suit by a surety against a decree-holder for damages for illegal arrest for a sum not exceeding 500Rs., is cognizable by a Small Cause Court and no special appeal will lie under s. 27 Act XXIII of 1861.—12 W. R. 471.

353. Where a Court has — over the subject-matter of a suit but proceeds erroneously, its judgment or decree is not null and void until it is regularly avoided.—12 W. R. 489.

354. Where the ownership of a zemindaree changed hands under a decree, and a ryot with a right of occupancy brought a suit in the Revenue Court on the ground of illegal dispossession by the new zemindars,—*Held* that the suit was maintainable under cl. 6 s. 23 Act X.—13 W. R. 20.

355. Under Act IX of 1861, the principal Civil Court of original — in a district alone has — to entertain and dispose of claims to the custody of minors.—13 W. R. 112, 23 W. R. 340.

The question as to the right to the custody of a minor is a purely civil matter and can be dealt with by the Civil Court alone under Act IX of 1861.—25 W. R., Cr., 35.

356. A Collector of Land Revenue appointed under s. 3 Reg. V of 1827 to be the administrator of an estate, cannot be sued as tenant by the zemindar under Act X for arrears of rent.—13 W. R. 191.

357. S. 20 Act VI of 1862 (B. C.) refers to a *suit* (not to execution proceedings), and to a suit as yet *untried*. It does not empower a Collector to withdraw a suit already under trial before a Deputy Collector for the purpose of being tried elsewhere.—13 W. R. 222.

358. A party succeeding to the proprietary rights of a lessor and dispossessing the lessee cannot sue the latter for rent due as tenant, unless he has attorned to him.—13 W. R. 228.

359. Where a judgment-debtor deposited money to save his tenure from sale in execution of a decree for rent, and the decree-holder took out the money whilst the question was being litigated in the Civil Court as to whether or not the decree was barred by limitation,—*Held* that the judgment-debtor's only remedy to get back the money was by a suit in the Civil Court.—13 W. R. 231.

360. A suit to recover money which plaintiff paid for defendant is in the nature of a suit for damages as described in s. 6 Act XI of 1865, and is cognizable by a Small Cause Court; no special appeal lies in such a case.—13 W. R. 273.

361. A suit for rent, where defendant holds under a lease for a party who subsequently gives a lease to plaintiff who gives him the right to collect rents from defendant in accordance with the terms of the former lease, is cognizable in the Revenue Court.—13 W. R. 301.

362. Money payable by a lessee in consideration of a lease granted, whether called "*nuzzur*" or "*salamee*," cannot be looked upon as rent, but is simply a debt due upon a contract, and is recoverable in a Small Cause Court.—13 W. R. 307.

363. A plaintiff is justified in bringing his suit in a Civil Court when that is the only Court which can grant him substantial relief, although as against one of the defendants Act X would have provided a partial remedy.—13 W. R. 331.

In other words, when third parties are made defendants, the Revenue Courts have no —.—16 W. R. 103.

364. Where plaintiff who, on paying rent to his landlord's mookhtar, was sued by the landlord who obtained a decree against him, in his turn now sued the mookhtar to recover the money paid to him, this last suit was held to be one for damages cognizable in the Civil Court and not under s. 23 Act X.—13 W. R. 359.

365. A Judge cannot, under s. 6 Act VIII of 1859, call up a case to his own file after the evidence has been taken by a Subordinate Court.—13 W. R. 398.

366. A Judge's order refusing to return a security-bond given to stay execution, after his decree has been reversed in appeal, is without —.—13 W. R. 403.

367. A suit for arrears of rent, when the plaint contained also a prayer for ejectment, having been dismissed by the first Court, an appeal was preferred to the Collector, who heard the case without any objection as to —, and decreed it solely upon the question of the extent and character of the land and the arrears of rent thereupon. *Held* that the Collector exercised a — which he had, no question of ejectment having been decided by the first Court, and no appeal having been made to the Collector upon that point.—13 W. R. 438.

368. After a decision by a Revenue Court under s. 77 Act X, a Civil Court may determine the legal title to the rent, and, when determining such title, may also determine whether any rent which may have been lost to a party by the decision of the Revenue Court, may not be recouped to him.—13 W. R. 458.

369. Under what circumstances a Magistrate may take cognizance, under s. 68 Act XXV of 1861, of offences without complaint made.—13 W. R., Cr., 1; 19 W. R., Cr., 4. *See* 19 W. R., Cr., 30.

Under s. 68 read with ss. 15 and 23.—18 W. R., Cr., 43.

370. Under what circumstances a Magistrate may issue a warrant of arrest under s. 68 Act XXV of 1861.—13 W. R., Cr., 27. *See* 19 W. R., Cr., 4.

371. A Magistrate cannot take cognizance of an offence under s. 174 Penal Code committed against his own Court, but is bound, under s. 171 Act XXV of 1861, to send the case for trial before another Magistrate.—13 W. R., Cr., 66. *See also* 15 W. R., Cr., 2, 88.

372. Where a Deputy Magistrate, on the mere report of a Police Officer and without taking evidence, made an order under s. 62 Act XXV of 1861, changing a day on which a *haut* used to be held, and subsequently, on taking evidence, found that his first order was wrong and without —, he was held to have acted properly in recalling his first order.—13 W. R., Cr., 72.

373. A Magistrate has no power under s. 62 Act XXV of 1861 to issue any order which is by its very nature irrevocable. All that he has power to compel the owner of property to do is to take certain order with it. Such power does not extend to an order to cut down a large quantity of trees. -13 W. R., Cr., 72.

374. The Collector has — to hear and determine suits in which either landlord or tenant is a *benamee* holder, the name used not being that of the real contracting party.—14 W. R. 12. *See* 18 W. R. 35.

375. In a suit upon one cause of action cognizable by a Small Cause Court against two defendants, one of whom resided within the local — of such Court, and the other within that of a neighbouring Moonsiff,—*Held* that, under s. 12 Act XI of 1865, the Small Cause Court had — to try the suit, and that the Moonsiff was debarred from entertaining it; but that before proceeding to try it, the Small Cause Court should apply to the High Court for authority to do so.—14 W. R. 156. *See also* 15 W. R. 397.

376. A defendant is not at liberty to waive —.—14 W. R. 228.

377. A non-commissioned officer or soldier, not serving in the Army, but employed in the Civil Department and residing beyond military cantonments, is amenable to the — of the Civil Court (the Small Cause Court) even in cases below £30.—14 W. R. 231.

378. Cl. 4 s. 23 Act X does not apply to a suit for arrears of rent where the land is occupied for building and not agricultural purposes or is not in the neighbourhood of lands occupied agriculturally.—14 W. R. 252.

379. A suit, the subject-matter of which did not exceed in amount or value 1000Rs., instituted one day after Act XVI of 1868 received the Governor-General's assent, was held to be cognizable by the Local Moonsiff and not by the Sudder Moonsiff of the District.—14 W. R. 375.

380. Since the orders of Government of 1867, the Judge of the Small Cause Court of Pubna alone has — to perform in that District the duties which, but for those orders,

JURISDICTION (*continued*).

would have been performed by the Principal Sudder Ameen of Rajshahye.—14 W. R. 396.

381. S. 12 Act XI of 1865 does not bar the — of a Small Cause Court in suits for wages under 50Rs. against European British subjects, though it may preserve the — of Magistrates in such cases which was created by the 53 Geo. III c. 155 s. 106.—14 W. R. 428.

382. Under s. 24 Act X, an agent (tehseeldar) cannot be called upon to account for illegal cesses or any other matters than rents collected in the course of his employment.—14 W. R. 447. *See* 25 W. R. 8.

383. The assignee or other legal representative of a landlord has a right to maintain a suit, under s. 24 Act X, against a gomashta for moneys received by him in the course of his employment.—14 W. R. 456. *See* 15 W. R. 344.

384. A suit against a gomashta and others claiming under pottahs from the zemindar, in which the party entitled to receive rent had not been sued, was held not to be cognizable under cl. 6 s. 23 Act X.—14 W. R. 465.

385. A Magistrate cannot pass an order under s. 62 Act XXV of 1861 directing a person to abstain from a certain act (*e.g.* not to collect certain cesses) unless he is satisfied that such direction on his part will prevent a riot or affray.—14 W. R., Cr., 3.

386. A Magistrate can, under s. 435 Act VIII of 1869, deal with cases in which an accused has been discharged by a Subordinate Magistrate or in which a complaint has been dismissed without enquiry by a Subordinate Magistrate.—14 W. R., Cr., 8.

Quære. Whether in such cases he is bound to order a commitment to the Sessions or a new trial before another Magistrate.—*Ib.*

387. A Magistrate cannot pass an order under s. 62 Act XXV of 1861 (*e.g.* for changing the day on which a *haut* is to be held) without calling on defendant to show cause why the order should not be passed and taking any evidence which the defendant may adduce.—14 W. R., Cr., 17.

388. A Judge has no authority under Act XVI of 1868 to order a Subordinate Judge to try proceedings in execution of a decree which are a portion of the original suit tried by himself.—15 W. R. 48, 574.

389. Where a Judge finds that an application for execution is within time and there is no appeal from his finding, his successor is not justified in going behind his order.—15 W. R. 67.

390. An application as to a matter prior to or affecting a decree transferred for execution by the operation of Act VIII of 1869 (B.C.) and Act III of 1870, must be made to the Court which passed the decree.—15 W. R. 75. 19 W. R. 128. (*Over-ruled by F. B.*) *see* 476 *post.*

391. Civil Courts have no power to interfere with the vested rights of parties merely by way of penalty, unless authorized to do so by positive legislative enactment.—15 W. R. 80.

392. Where defendant had been plaintiff's servant in charge of plaintiff's shop on the understanding that he was to be remunerated by a small share of the profits in lieu of fixed wages, a suit to recover the balance after deduction of such remuneration was held to be for a demand cognizable by the Small Cause Court, and not for balance of partnership account, no special appeal lying in such a case.—15 W. R. 89.

393. A suit to re-open a ferry included in an estate obtained from the Government, was held not to be maintainable, the ghât where plaintiff desired it to be re-opened being within two miles of where a public ferry was established.—15 W. R. 132.

394. A suit for declaration that certain lands mortgaged in satisfaction of an instalment-bond were liable for the sum due under the bond is substantially a suit for an interest in land, and as such cognizable, under s. 5 Act VIII, by the Court within whose — the property is situated, even though the cause of action has not arisen there and the defendants reside elsewhere.—15 W. R. 277, 18 W. R. 287, 23 W. R. 123.

So also a suit for the sale of mortgaged property in satisfaction of the mortgage debt is a "suit for land" within the meaning of the same section, in the same sense that a suit for foreclosure or redemption has been so held to be.—18 W. R. 269.

395. A suit for money below 500Rs., alleged to have been improperly taken away from the Collector who held it in deposit on account of certain lands taken for public purposes, was held to be cognizable by a Small Cause Court, in which special appeal was barred by s. 27 Act XXIII of 1861.—15 W. R. 397.

396. The — of a Revenue Court in a suit for rent is not affected merely because there are a few houses on the land demised, so long as the principal subject of the demise is land.—15 W. R. 463, 520.

397. The Collector's — obtains where no sub-divisional officer exists, s. 20 Act VI of 1862 (B. C.) not applying to such a case.—15 W. R. 498. *See* (*F. B.*) 476 *post.*

398. The thatch of a house is moveable property, and a suit to recover its price, if not exceeding 500Rs., must be brought in a Small Cause Court.—15 W. R. 499.

399. Foreign Judgment.—*See* Practice (Execution of Decree) 166, 191.

400. When a manager is appointed under Act XL of 1858, the Civil Court has no authority to restrict or limit, by description or otherwise, the nature or extent of the minor's property.—15 W. R. 529.

401. A Sessions Judge has no power to interfere with the order of a Magistrate attaching disputed land under s. 319 Act XXV of 1861.—15 W. R., Cr., 1.

402. Only the Magistrate of a District, and not the Joint Magistrate while in charge of the Magistrate's office, has — in a case under s. 308 Act XXV of 1861.— 15 W. R., Cr., 36. *See* 16 W. R., Cr., 79.

But a Joint Magistrate in charge of a division of a district has —.—15 W. R., Cr., 41.

403. In the case of an offence under s. 94 Act XX of 1866, if a Magistrate thinks that a more severe sentence is necessary than he is competent to inflict under the power vested in him by Act XXV of 1861, it is competent to him, under s. 226 of the latter Act, to commit the accused to the Sessions, and on such committal a Sessions Judge has — to deal with the charge and to convict and sentence the accused as provided for in the former Act.—(F. B.) 15 W. R., Cr., 58.

404. In the case of a complaint, under s. 308 Act XXV of 1861 for the removal of an obstruction from a thoroughfare, the Magistrate's — depends on whether the road is a public one or not.—15 W. R., Cr., 67.

405. Where defendant, although he resided principally at Patna, was in the habit of buying country produce there and bringing it to Calcutta for sale and returning with the sale-proceeds to Patna, and also in the habit of drawing bills and hoondees at Patna on himself at Calcutta where he used to pay them from the proceeds of his sales,—*Held* that he did *carry on business* or *work for gain* within the local — of the High Court within the meaning of cl. 12 of the Charter.—16 W. R., O. J., 16.

406. S. 10 Act VI of 1862 (B. C.) only empowers a Collector to enquire into the state of the facts, *i.e.* how every portion of land in the estate was held, by whom held, and the rent then payable in respect of such land, but not whether particular tenants are mokurrureedars or not, which last point is cognizable by the Civil Court alone.—16 W. R. 50.

407. The failure of an injured party to institute criminal proceedings does not deprive him of his right to bring a suit in the Civil Court to recover damages for abuse.—16 W. R. 83.

408. Under Act VIII of 1869 (B. C.) a person out of possession has no right to come and ask the Court for a decree for rent with the view of bringing in a third party and having tried, under color of a rent-suit, a question of title between himself and that third party; such a proceeding being altogether opposed to the principle laid down in s. 7 Act VIII of 1859.—16 W. R. 235, 19 W. R. 91, 22 W. R. 526.

409. Courts having — over the subject-matter of a suit in which a right is asserted, have also — over a supplemental suit in which the plaintiff seeks to follow out that right.—16 W. R. 240.

410. Whatever the purpose for which a man may go to another — than that in which his family resides, if there is an *animus revertendi*, the family dwelling-house must be considered to be his dwelling place.—*Ib.*

411. In determining the — of a Court in a suit for damages, the amount claimed, and not that eventually found due, must be taken as the valuation.—16 W. R. 248.

JURISDICTION (*continued*).

412. Where a suit in which a decree has been passed by a Deputy Collector is transferred to a Moonsiff's Court under Act III of 1870 (B. C.), an application for re-hearing under s. 58 Act X can only be heard by the Moonsiff.—16 W. R. 255. *See* (F. B.) 21 W. R. 448. *But see* 18 W. R. 207, 252.

413. When an estate is placed under the control of the Collector under s. 12 Act XL of 1858, the Civil Court has no — under that Act, or under Act IX of 1861, to interfere with the Collector in the charge of that estate.—16 W. R. 263.

414. A suit for a legacy must be brought, not within the — where the legatee resides, but within the — where the heir resides.—16 W. R. 305.

415. A decree in which no actual proceedings were pending in the Collector's Court at the commencement of Act III of 1870 (B. C.), was held to have been properly transferred to the Civil Court under s. 3 of that Act.—16 W. R. 308. *See also* 17 W. R. 139, 21 W. R. 412.

416. A Deputy Commissioner in a Non-Regulation Province falls under s. 14 Act XXV of 1861 under the designation of Magistrate of the District, and is competent to decide upon an appeal preferred under s. 412 from an order of a Subordinate Magistrate who has exercised — in a case in which he had no —.—16 W. R., Cr., 1.

417. A Sessions Judge has no authority under the law to interfere with the order of a Magistrate allowing a prosecution for false evidence.—16 W. R., Cr., 69.

418. The power of a Magistrate to delegate the receiving of complaints under s. 66*B* Act VIII of 1869 is not equivalent to the power of the Local Government to invest with local — under s. 33*D*; and no Magistrate can act under Chap. XX Act XXV of 1861 who has not been legally invested with local —.—16 W. R., Cr., 79.

419. A Small Cause Court has — to entertain a suit for damages against a party who has refused, after notice, either to quit plaintiff's land or to pay rent.—17 W. R. 69.

420. A Civil Court has no — in a suit to recover possession of an elephant alleged to have been forcibly carried away from plaintiff by defendant, in which the defendant pleads that the cause of action arose, and that he ordinarily resides, in Foreign territory.—17 W. R. 10.

421. A suit to assess rent at an increased rate upon the defendants and for a decree for rent at such rate in respect of land situated in a town and upon which either a house or shop stands, is not a suit for rent within the meaning of s. 6 Act XI of 1865, and is maintainable in the ordinary Civil Courts and not in the Small Cause Court.—17 W. R. 178.

But a suit for rent merely of land admitted to be *bastoo*, *i.e.* used for building purposes, is cognizable in a Small Cause Court.—19 W. R. 308, 21 W. R. 5.

The Small Cause Court has — when the principal subject of the entire occupation is *bastoo* land, but not when the principal subject is agricultural land, the building or buildings being mere accessories thereto.—24 W. R. 152.

422. A suit can be brought under Act VIII of 1869 (B. C.) for arrears of rent due on account of land used for building purposes.—17 W. R. 183.

423. A Judge was held to have no authority in an execution case not before him to direct a precept to be sent to a Subordinate Judge, upon which precept the latter stayed execution.—17 W. R. 341.

424. In a suit for money lent under a bond which was executed at a place where plaintiff had been resident at the time and some years previously, the intention was held to be to make the money payable there, and the District Judge was held to have —.—17 W. R. 345.

425. Where a decree of 1850 could not be executed by the Revenue authorities in consequence of the transfer of their — to the Civil Courts, the latter were held to have — to execute it.—17 W. R. 471.

426. A Judge has power, under s. 19 Act XVI of 1868, to transfer to the Subordinate Judge a case under Act IX of 1861, an application under the latter Act not being a suit.—17 W. R. 551.

427. The Sessions Court at Patna was held to have — to try the offence of abetment of waging war against the Queen though the waging of war did not take place in Patna, and notwithstanding an erroneous statement in the charge of the abetment having taken place at Calcutta, when the evidence was sufficient to show the abetment at Patna; such erroneous statement being an error or defect in the charge which is cured by s. 426 Act XXV of 1861.—17 W. R., Cr., 15.

428. A Magistrate has no power under s. 318 Act XXV of 1861 to adjudicate on any question concerning lands beyond the limits of his —.—17 W. R., Cr., 33.

429. A Magistrate has — under s. 318 Act XXV of 1861 to prevent breaches of the peace in places where the rivers have dried up. The — that was once there under s. 30 is not taken away by reason of the land having appeared and the water disappeared.—17 W. R., Cr., 53.

430. A suit for the recovery of money alleged to have been paid by plaintiff to an *ijaradar* on account of arrears of rent, when the same has not been applied to the purpose for which it was given, or when a receipt for it is withheld from the plaintiff, is not cognizable by a Small Cause Court, but by a Moonsiff under s. 11 Act VIII of 1869 (B. C.).—18 W. R. 25. *See also* 23 W. R. 304.

431. A suit will lie for the recovery or the value of property attached under s. 81 Act VIII of 1859 and afterwards made away with by the defendant in collusion with the attaching officer, without a criminal prosecution being previously instituted against them.—18 W. R. 27.

432. Where defendant objected to the — in the first Court, but took no objection to the — in the Lower Appellate Court, the High Court considered the objection waived.—18 W. R. 35.

433. The provision in Act VIII of 1869 (B. C.) for suits under it being entered in a separate register was for statistical purposes, and not to separate the — exercised by one Court so as to render a suit brought under that Act liable to be struck off in order that a fresh suit might be brought under Act VIII of 1859, even if that suit was not really a suit for rent.—18 W. R. 99. *See* 18 W. R. 313, 22 W. R. 178.

434. The word "contract" in s. 6 Act XI of 1865 was intended to include a suit to recover a share of money received by defendant on behalf of plaintiff on an implied contract to pay it over to plaintiff.—18 W. R. 104.

435. An action will lie against the Secretary of State in Council, under 21 and 22 Vic. c. 106 s. 65, for the salary of a Government officer if not paid when attached as a debt under s. 236 Act VIII.—18 W. R. 124.

436. A former decision by the Courts in India confirmed by the Privy Council, adjudging the land in dispute to be an accretion to the respondent's settled estate in Shahabad, was held to be a bar, under s. 14 Act VIII, to the — of the Ghazeepore Courts to try the present suit for the same land.—(P. C.) 18 W. R. 182.

437. A party convicted in a Criminal Court of cheating, and compelled to return the consideration-money which he had taken and for which he had not delivered the goods according to contract, cannot be sued in a Civil Court for damages for breach of contract.—18 W. R. 217.

438. A clear finding of the fact upon evidence whether the subject-matter of a suit was within the — of a Court at the time when the application for execution was made, is necessary to determine whether the Court has — in the matter.—18 W. R. 278.

439. A suit for money paid by an unsuccessful claimant, under s. 246 Act VIII, in order to save from sale his share of an estate which had been attached in execution of a decree, is in reality a suit for damages and (the value being below 500Rs.) is in the nature of a Small Cause Court suit in which no special appeal will lie.—18 W. R. 283.

440. A suit to get rid of the effect of an order passed by a Deputy Magistrate under s. 320 Act XXV of 1861, declaring a certain river to be a public thoroughfare, and to have it declared that plaintiffs are entitled with others to use the water of the said river by raising bunds or dams in the bed of the stream as heretofore, will not lie in the Civil Court; the only way in which the Deputy Magistrate's order can be got rid of in the Civil Court being by distinct proof of plaintiff's title to exclusive possession of the right of water claimed.—18 W. R. 284.

441. S. 24 Act X did not give — to the Revenue Courts to try claims against agents employed in the collection of rent, for damages arising from an alleged neglect of duty.—18 W. R. 339.

442. A suit for *dustoorut* is not a suit for rent, and therefore not cognizable under Act VIII of 1869 (B. C.).—18 W. R. 343.

JURISDICTION (*continued*).

443. Where the Judge, after the Sudder Ameen's Court at Gya ceased to exist, made an order transferring certain proceedings in execution to the Subordinate Judge, the order was reversed as made without —.—18 W. R. 345.

444. In a suit against the Secretary of State to recover principal and interest on certain "mortgage-bonds" executed by the late King of Delhi,—*Held* that Municipal Courts had no — to enforce engagements between Sovereigns founded on treaties, and that the circular under which plaintiff claimed did not amount to a law and did not fall within the meaning of the 24 and 25 Vic. c. 67.—(P. C.) 18 W. R. 389.

445. Money which defendant has contracted to pay as rent, cannot be sued for under Act XI of 1865.—18 W. R. 441.

446. Where the purchaser at a sale, under s. 54 Act XI of 1859, of a share of an *aymah* estate, sued for possession of the lands in the occupation of the sharer whose rights and interests he had purchased, and the other sharers, who had previously to the suit preferred an application under s. 11 and made a separate account of their shares with the Collector, alleged that plaintiff was in possession of all that he could claim as purchaser,—*Held* that the suit was not a suit for partition and that the Civil Court had —.—18 W. R. 461.

447. Where there is no difficulty as to the authority of a manager appointed under Act XL of 1858 to bring a suit under s. 15 Act XIV of 1859, a Subordinate Judge has — in the matter; but *semble*, under s. 11 Act IV of 1870 (B. C.), a Collector has not power to give authority to a manager to bring such a suit.—18 W. R. 465.

448. Where plaintiff took a lease from defendant and on the faith of a *bakee-jaee* setting forth a certain sum of money (under 500Rs.) due from the tenants as rent, paid him that sum; and on suing the tenants for the same and being met by the plea of payment, at last sued the defendant for a refund,—*Held* that the claim was for money due under an implied contract, and cognizable by a Small Cause Court under cl. 6 Act XI of 1865, and that no special appeal lay.—18 W. R. 481.

449. An Assistant Commissioner in Chota Nagpore was held to have no — to try a case of culpable homicide not amounting to murder under s. 304 Penal Code (s. 12 Act XXVII of 1870).—18 W. R., Cr., 23.

450. The Lower Criminal Courts cannot punish, as abettors, persons who gave evidence in support of false charges or rather charges found by such Courts to be false. —18 W. R., Cr., 28.

451. One Magistrate has no authority to set aside the order of another Magistrate.—18 W. R., Cr., 40.

452. Where cause is shown by a party under s. 308 Act XXV of 1861, it is not only within the — but the duty of a Magistrate to enquire whether there is a thoroughfare within the meaning of the section and whether there is an obstruction.—18 W. R., Cr., 41.

453. In a suit brought in a British Court in Burmah to recover possession of timber alleged to have been obtained under a grant from royal authority, but taken from plaintiff's possession by defendant without color of right and in collusion with the Burmese Governor of Ninghan, where in defence an act of State was set up and it was contended that the person through whom defendant had taken possession was the foreign local authority and that a Court of British India was not entitled to enquire into the character of that act,—*Held* that the Court was bound to see whether the act relied upon as an act of State was one of that character; that the placing of marks on the timber by the Governor did not amount to an act of confiscation; that, with reference to the alternative damages awarded to the plaintiff, it was unnecessary for the High Court to lay down the principle on which they should be assessed; and that, as the defendants had at their own risk removed the timber from Tonghoo to Rangoon (where the suit was tried), the plaintiff was entitled to insist on delivery, or, in default, to recover the value of the timber without any deduction on account of the charges incurred by defendants in removing the timber to that place.—19 W. R. 123.

454. Findings under s. 10 Act VI of 1862 (B. C.) will not be upheld unless it is shown beyond a doubt that the proceedings of the Revenue Officers referred to have been conducted in strict accordance with the terms of that section. —19 W. R. 168.

455. An action will lie in the Civil Court in the event of an obviously wrongful act having been committed against plaintiff under color of the decree of another Court; but the execution of an imperfect decree does not involve what is unlawful or the doing of a wrong unless the decree is incorrectly interpreted.—19 W. R. 188.

456. Where a zemindar from the Mofussil comes in occasionally to the head-quarters of a Small Cause Court to prosecute or defend suits, settle business with creditors, or for social intercourse or medical treatment, and remains in his boat or puts up in the house of their mookhtars and kurpurdauzes, he cannot be said to have a "lodging" within the limits of such Court, such as is intended by s. 8 (Explanation *a*) Act XI of 1865.—19 W. R. 341, 23 W. R. 223.

457. With reference to s. 311 Act XXV of 1861, it was held that a suit will not lie against a Magistrate for making an order under s. 308 for the removal of an obstruction, and that the decision of the jury applied for by plaintiffs under s. 310 cannot be questioned in a civil suit.—19 W. R. 345.

458. At the time of the passing of Act XVI of 1868 which abolished the Courts of the Sudder Ameens, an appeal was pending against the decree of a Sudder Ameen, which resulted in a modified decree passed after the date of the passing of the Act,—*Held* that, although the appeal was pending in a superior Court, yet the proceedings were pending in the original Court of trial within the meaning of s. 12, and that the Moonsiff's Court was the only Court which had — to execute the decree.—19 W. R. 414.

459. Where a claim had been reduced to a simple claim for a declaration that certain land was *mál* and therefore one within the ordinary — of the Civil Courts,—*Held* that the Judge was at liberty, and ought (notwithstanding that the suit had been originally registered as a suit under Act VIII of 1869 B. C.), to have proceeded with that part of the case and to have disposed of the appeal as to that only.—20 W. R. 14.

460. A District Judge has — to interfere under s. 26 Reg. V of 1812 in cases other than those affecting the collection of the public revenue.—20 W. R. 54.

461. Mofussil Courts have not the same power as the High Court on the original side to make orders *in pœnam*, against persons not parties to the suit, to pay the costs of a suit which they have promoted or instigated.—20 W. R. 123.

Even when such persons are made parties to the suit in the appellate stage without their consent.—22 W. R. 36.

462. A suit for rent derivable by a lessor from tolls collected by the lessee from persons resorting to a *haut*, is not cognizable under Act VIII of 1869 (B. C.).—20 W. R. 146.

463. Where a Small Cause Court wrongly declined —, and the plaintiff brought his suit in the Moonsiff's Court where it was dismissed on the ground that it was cognizable in the Small Cause Court, and the Subordinate Judge in appeal reversed the Moonsiff's decision, the High Court, in setting aside the decision of the Subordinate Judge, ordered the Small Cause Court to entertain and try the suit on the present plaint.—20 W. R. 332.

464. A Small Cause Court was held to have no — in a case where not only questions of title incidentally arose, but also questions as to the right of a *Mutwalee* to receive the profits of a share of the disputed property allotted for *rehal-alla* ("way to God") and whether the collections of this share should be made by the heirs in equal shares or according to the Mahomedan law.—20 W. R. 349.

465. The word — in s. 37 Act VIII of 1869 (B. C.) refers not merely to local — but also to — as to value.—20 W. R. 385.

In order to determine what Court has — to hear a suit to establish a zemindar's right to measure land, it must be seen what Court would have — to hear a suit brought for the recovery of such land.—24 W. R. 423.

466. A Judge was held to have no — to entertain an application by way of appeal from a person, not a party to the suit, who objected to an attachment and whose objection had been over-ruled, and whose remedy (if he had need for one at all) was by separate suit.—21 W. R. 10.

467. A suit for rent, as authorized by Act VIII of 1869 (B. C.) to be tried in the Civil Courts, must be a *boná fide* suit for rent, and not a trial of a wholly different issue between parties advancing conflicting claims of ownership to the estate.—21 W. R. 88.

JURISDICTION (*continued*).

468. The removal of an obstruction by a Magistrate under cl. 1 sch. K Act VI of 1868 (B. C.) is not a judicial but an executive or ministerial act, and even the imposition of a fine on the person who set up the obstruction does not protect the Magistrate under Act XVIII of 1850 from an action for damages.—21 W. R. 126, 391.

469. The High Court refused to grant leave, under s. 12 of the Charter, to a Hindoo widow to sue for enhancement of maintenance and for a declaration that it should be a charge on her late husband's estate, which was in Calcutta as well as in Benares, where it appeared that there was no reason why the suit should be tried in Calcutta (the parties and witnesses residing in Benares), and no necessity for declaring the maintenance a charge on the Calcutta property as there was ample property within the — of the Court at Benares to satisfy the maintenance.—(O. J.) 21 W. R. 204.

470. The Court of a district other than that in which a decree is passed has no — in the matter of its execution, excepting such as it may obtain in pursuance of s. 287 Act VIII, which does not give any — to entertain or determine any question as to the right of the person asking execution.—21 W. R. 219.

Nor any — to transmit the decree to a third Court.—21 W. R. 337.

471. In a suit for rent the Court is not precluded from going into the real question between the parties and determining whether the defendant had ceased to be liable as a tenant and had become in fact the proprietor of the land, so that the tenancy merged in his higher right.—21 W. R. 349.

Questions of title may require to be incidentally pronounced upon in a rent suit; but the enquiry must be restricted to the purposes of the suit, and the result cannot affect or bar any subsequent decision as to such title in a regular suit.—24 W. R. 44.

472. A suit for damages consequent on attachment before judgment under s. 81 Act VIII in a previous suit brought against plaintiff which was dismissed with costs, is cognizable in the Small Cause Court. Such a suit would only be barred when compensation had been awarded under s. 88.—21 W. R. 375.

473. In a suit, brought before a Small Cause Court, for rent of a holding which plaintiff alleged to be included within certain homestead land which he owned in virtue of a sale-certificate in execution of a decree, defendant urged that the said holding was expressly excluded from the certificate, and plaintiff further contended that defendant had agreed to pay him rent for the land in question. *Held* that the material issue was as to the alleged agreement to pay rent, and that on plaintiff's failure to prove it, the issue would be as to whether the land belonged to him or to defendant and would require to be settled in the Civil Court.—21 W. R. 379.

474. State policy has nothing to do with the question whether a plaintiff or defendant has the right to a settlement made by the Collector of land in Jynteah, and the Civil Court has — to determine such a question in a civil suit.—21 W. R. 395.

475. A civil suit will lie against defendant for opening a new drain abutting on plaintiff's house, on proof of special damage or inconvenience in the way of nuisance to plaintiff.—21 W. R. 404.

476. After a decree has been transferred under Act III of 1870 (B. C.), any application in relation to it (*e.g.* to set it aside) should be made to the Court to which it has been transferred.—(F. B.) 21 W. R. 448.

477. Under s. 20 Act VI of 1862 (B. C.), a suit under that Act and Act X of 1859 can only be preferred in the Revenue Office of the sub-division in which the cause of action has arisen. When a suit has been preferred in the Revenue Office of the district and has been referred by the Collector to another Deputy Collector, the decree is not void for want of —, but is voidable only at the instance of the defendant.—(F. B.) 21 W. R. 450. *See also* 22 W. R. 301.

478. A Magistrate of the 2nd class having passed an order under s. 518 Act X of 1872 for the removal of an obstruction, the Magistrate on appeal held that, though the proceedings of the Subordinate Magistrate were without —, yet he (the Magistrate) was competent under s. 518 to direct the removal of the obstruction, and he passed an order accordingly. *Held* that the order of the Magistrate under s. 518 was illegal, and that he should have proceeded under s. 521 *et seq.*—21 W. R., Cr., 24.

479. Where a Magistrate, without hearing the petitioner or giving him an opportunity of being heard, and simply upon the foundation of a Police Officer's report, directed the petitioner to abstain from holding a *haut* upon his land on a certain day because another party had long been accustomed to hold a *haut* upon his land adjacent to the petitioner's *haut* on the following day,—*Held* that the Magistrate had acted without —, the Police Officer's report being vague and insufficient, and a private interest of this kind not affording a ground for making an order under s. 518 Act X of 1872 or any other order under that Act.—21 W. R., Cr., 26. *See also* 22 W. R., Cr., 24.

Nor does the section apply to a case which refers to the collection of market dues.—23 W. R., Cr., 57.

480. Where an offence under s. 503 Penal Code was said to have been committed during a railway journey from Bombay to Calcutta,—*Held* that the Magistrate of Howrah had no — to entertain the charge, and that s. 67 Act X of 1872 did not apply.—21 W. R., Cr., 66.

Where a box containing money was missed during a halt at Sumbhoogunge in the — of Tipperah from a boat which was on the way to Chittagong,—*Held* that the journey was not broken by the halt, and that under s. 67 the case should be tried at Chittagong and not Tipperah.—25 W. R., Cr., 45.

481. S. 70 Act X of 1872 contemplates only such an error of — as may arise from the trial of a case in one district or sessions division instead of a neighbouring district or sessions division of the same province, and does not apply to cases where the right local — is a — foreign to the Court which has power to order a new trial and lying entirely outside the province to which the local division or district belongs in which the charge was actually entertained.—21 W. R., Cr., 66.

482. The High Court declined under s. 70 Act X of 1872 to interfere with an order in a case under s. 530, in which the objection as to — was not seriously taken in the Court below and in which the petitioner failed in his application to the High Court to show that he had been in any way prejudiced.—21 W. R., Cr., 88.

483. A suit for partition of revenue-paying land is not cognizable by a Civil Court; and it cannot succeed even as to lakheraj land unless it specifies quantity and situation.—22 W. R. 11. *See* 22 W. R. 333.

484. In determining the limits to be placed upon the — of the Court by the requirement in s. 5 Act VIII that "the cause of action shall have arisen within the limits" of the Court's —,—*Held* that an action may be brought either in the former of the places where the contract was made or in that where the performance was to have taken place; or where no place of performance is prescribed by the agreement or exacted by the necessities of the case, the intention of the parties must be looked to, to be ascertained from their acts and the surrounding facts.—22 W. R. 79.

485. The ordinary rule is that the obligor is bound to seek the obligee and tender the money due at the place where the engagement was entered into, or at the residence of the creditor, and failure to fulfil this obligation is a cause of action.—*Ib.*

486. A pauper application to sue in a Subordinate Judge's Court having been opposed on the ground of over-valuation, was renewed successfully in the Moonsiff's Court, where plaintiff obtained a decree. In appeal the question of — was raised, and the Additional Judge decided that the suit was of a value beyond the Moonsiff's competency to try. *Held* that as it was at defendant's opposition that the original application was rejected, he was not at liberty at this stage to turn round and object to the — of the Moonsiff.—22 W. R. 120.

487. S. 6 Act VIII does not take away — from a Court which has general —. Accordingly, where an alleged irregularity had in no way prejudiced the appellant, the High Court thought it unnecessary to go into the question of valuation with a view to determine in what Court the suit ought to have been brought.—22 W. R. 301.

488. A suit will lie under s. 15 Act VIII for a declaration that a *nullah*, in respect of which criminal proceedings for mischief had been successfully taken against plaintiff's tenants under s. 430 or s. 432 Penal Code, was his own

JURISDICTION (*continued*).

exclusive property and therefore not such a stream as could come under those sections.—22 W. R. 329.

489. Where a plaintiff desires to obtain a partition of his estate, and where that claim to partition is complicated by a dispute in respect of the amount of that share, he may bring his suit in the Civil Court in order to have his share declared, and to have the partition itself referred to the Collector as provided by s 5 Reg. XIX of 1814.—22 W. R. 333.

490. A shareholder in a joint estate has no right to bring a suit in the Civil Court to separate from the estate a small portion which he desires to occupy for his own convenience.—*Ib.*

491. Although one Court cannot set aside the proceedings of another Court for want of —, yet when a matter arises before a Court in the ordinary course of its — and one of the parties relies on, or seeks to protect himself by, the proceedings of another Court, the — of the Court whose proceedings are pleaded may be enquired into.—22 W. R. 361.

Accordingly in a suit in which plaintiff asked for a declaration of title, and a Revenue Court's want of — appeared on the face of its decree, a Moonsiff was held justified in holding that the Revenue Court had no —.—*Ib.*

492. The Revenue Court has no — to pass a decree for enhancement of rent with respect to *bustee* land (in the town of Midnapore).—*Ib.*

493. A Subordinate Judge has no — to try a suit brought to set aside a probate of a will.—22 W. R. 416.

494. Where a Moonsiff is invested under s. 29 Act VI of 1871 with the — of a Small Cause Court up to 50Rs., in a place where there is a regular Small Cause Court, a suit of the nature cognizable by Small Cause Courts for an amount in value below 50Rs. ought, by the operation of s. 6 Act VIII of 1859, to be instituted in the Court of the Moonsiff exercising Small Cause Court —.—22 W. R. 457.

495. Under s. 9 Act XL of 1858 the Judge has no power to appoint the Collector as manager of the estate of a minor until he is satisfied that no person has established title to a certificate under a will or deed, and that there is no relative willing and fit to be entrusted with the charge of the property.—22 W. R. 490.

496. A Court cannot take notice of an agreement (*e.g.* in the way of awarding damages for breach thereof) which has reference to social and religious customs, and which cannot be enforced by a Civil Court.—22 W. R. 517.

497. The — which is given to a Magistrate by s. 532 Act X of 1872 is a — which is intended for the purpose of keeping the public peace.—22 W. R., Cr., 48.

498. The Governor-General of India in Council has power to subject European British subjects to a — other than that of the High Courts—*i.e.* to that of Magistrates in the Mofussil.—22 W. R., Cr., 54.

499. Where plaintiffs' cause of action consisted in defendant's refusal to pay the price of certain indigo seed supplied to them, which payment ought to have been made at plaintiffs' residence in a certain district, the "cause of action" was held to have arisen within the — of the Subordinate Judge of that district, within the meaning of s. 5 Act VIII.—23 W. R. 63.

500. Where a decree is *ultra vires*, the debtor's remedy is by an application for review to the Court which passed it, or by an application to the High Court to exercise its general powers of supervision under 24 and 25 Vic. c. 104 s. 15.—23 W. R. 271. *See* (P. C.) 26 W. R. 44.

501. A suit for arrears of rent of the description known as *phulkur* is cognizable by the Moonsiff under Act VIII of 1869 (B. C.). A Small Cause Court has no — to try it.—23 W. R. 304.

502. Where two suits brought by different sharers of one property against the same defendant were tried by the Moonsiff without any objection on the score of —, and the Lower Appellate Court raised the issue whether the suits were brought separately in order to bring them within the Moonsiff's —, and concluding that this was the object, reversed the Moonsiff's decision,—*Held* that the Lower Appellate Court ought not to have raised the issue on its own motion, but to have heard the appeals on the merits.—23 W. R. 408.

503. A suit not only for payment of arrears, but for assessment of rent at the rate for which arrears were claimed before, is not cognizable in the Small Cause Court.—23 W. R. 426.

504. A Magistrate was held to have no —, under s. 518 Act X of 1872, to interfere in a case where a tree had been cut down and thrown across a small *nulla* and thereby the water passage was obstructed.—23 W. R., Cr., 34.

505. A case of assault, tried by the Assistant Magistrate of Purneah, having been appealed to the Sessions Judge of that district, who ordered an enquiry and found that the assault had been committed in Maldah and thereupon released the accused, as the Magistrate of Purneah had no —,—*Held* that the Judge had no — under s. 70 Act X of 1872 to make such an order, the accused not having been prejudiced in his defence; and that he ought not to have ordered the enquiry as to the place where the assault was committed, that question having no bearing on the guilt or innocence of the accused under s. 282.—23 W. R., Cr., 34.

506. A certificate of non-satisfaction under s. 20 Act XI of 1865 having been obtained from the Small Cause Court at Arrah, the decree was transferred to the Moonsiff's Cour there, when the judgment-debtor objected that execution was barred by limitation. *Held* that the Moonsiff, as the successor in power of the abolished Court of Small Causes (whose — had been transferred to the Moonsiff's Court), had — to decide the objection.—24 W. R. 151.

507. A claim for money on a bond as specified in s. 6 Act XI of 1865 does not include a case for a declaration that the bond has been satisfied and is inoperative. A suit of that description, if maintainable, must be brought in the regular Court.—24 W. R. 190.

508. Where a tenant obtains a decree directing the withdrawal of a distraint under s. 95 Act VIII of 1869 (B. C.), and the landlord, by refusing to deliver up the full amount of the distrained property, is guilty of refusing to withdraw the distraint within the meaning of s. 98, the tenant's remedy is a suit in the Moonsiff's Court under that section; the Small Cause Court has no — in the matter.—24 W. R. 222.

509. The Civil Court has — in a suit between joint owners of talooks, who have been occupying and using separate and distinct parts of premises within the estate, where the object is to prevent encroachment by defendants upon the part occupied by plaintiffs, without any division of the Government revenue or alteration of the joint liability to pay that revenue.—24 W. R. 243.

510. Where a plaintiff, in the first instance, brought his suit before a Moonsiff, and was referred by him to a higher Court (viz. that of the Subordinate Judge), from whose file the District Judge withdrew the case to try it himself, but finding a portion of the claim untenable, referred the plaintiff to the Moonsiff's Court for the trial of the remainder, —*Held* that the Judge should have decided the remaining issues himself.—25 W. R. 43.

511. Where a guardian and manager of the property of a minor granted to himself *benamee* the farming lease of a mehal belonging to the minor, a suit by the minor, on attaining majority, for rents collected by such guardian and manager but not accounted for to him, was held not cognizable by the Small Cause Court, as the defendant could not be considered simply as an agent to collect plaintiff's rents, but was bound as a trustee to account to plaintiff for the proceeds of the property.—25 W. R. 75.

512. Where land of the value of 100Rs. or upwards was mortgaged on a bond which was not registered, as it ought to have been, under the Registration Act in force at the time,—*Held* that the bond could only be sued upon as a money-bond; and though the suit might be brought in a Court within whose — the land was not situated, the Judge would have no right, even with the consent of the parties, to deal with it as a mortgage, or to make any decree affecting the land in dispute.—25 W. R. 78.

513. Where execution has been issued by a Sudder Ameen, and, notwithstanding the proceedings were struck off the file, an attachment was still pending when that office was abolished by Act XVI of 1868,—*Held* that the Sudder Moonsiff, who succeeded to the — of the Sudder Ameen, had power to take up the case, and issue execution proceedings.—25 W. R. 105.

514. In a dispute regarding certain land over which the

JURISDICTION (*continued*).

— of the British Courts was alleged by the defendant to have ceased by reason of the cession by the British Government to the Thakoor of Bhownuggur of certain territory within which such land was included, the Privy Council held that the alleged cession of territory merely amounted to a transfer of certain territories from British to a special local —; and that such transfer of — had not been legally made.—(P. C.) 25 W. R. 261.

515. One of two co-sharers in certain lands, acting under a power of attorney, having conveyed the share of the other, as well as his own, to trustees in trust to call in and convert the same and pay creditors, and the other co-sharer, upon hearing of the deed, having repudiated the transaction and denied his co-sharer's power or authority to deal with his share; a suit by the creditors to enforce the execution of the trusts of the deed was held not cognizable by the High Court on its original side, it being substantially a "suit for land" within the meaning of s. 12 of the Charter.—(O. J.) 25 W. R. 272.

516. Where an Assistant Commissioner in a Non-Regulation district, vested with 1st class powers as a Magistrate and with summary — in one place, had gone on furlough, and on his return been posted to another place and there vested with the former only,—*Held* that the second appointment was not a "transfer" under s. 56 Act X of 1872, and that the officer did not possess summary powers in his second charge.—25 W. R., Cr., 52.

517. Courts of justice have no power to settle the rate of rent for future years between the occupier of land and the owner.—25 W. R. 488.

See Abatement 3, 10.
Adultery 3.
Appeal 18, 26, 30, 64, 91, 110, 129, 138, 181.
Appellate Court 10.
Arbitration 32, 34, 50, 68, 69, 70, 72.
Arrest 9.
Attached Property 13, 33.
Auction-Purchaser (Execution Sale) 7.
Autrefois Acquit 1.
Bench of Magistrates 1, 3.
Bill of Lading 5.
Bottomry Bond 1, 2.
Boundary 3, 9.
Breach of Contract 9.
Cattle Trespass 5.
Cause of Action 10.
Certificate 28, 37, 82, 83, 119.
Cesses 2.
Churs 72.
Commitment 7.
Compromise 17.
Contempt of Court 4, 11.
Contractor 3.
Contribution 2, 3, 8, 28.
Conviction 2.
Copyright 2.
Co-sharers 3, 18, 34, 42.
Costs 11, 12, 72, 81, 83.
Court Fees 17.
,, of Sessions 1.
Damages 19, 32, 49, 51, 68, 70, 75, 77, 87, 91, 97, 98.
Declaratory Decree 43.
Defamation 1.
Default 6.
Deposition 1.
Drain 1.
Ejectment 21, 32, 45, 46, 54, 56, 70, 71.
Endowment 7, 67, 7[illegible]
Escape 2.
See Evidence (Estoppel) 34, 35, 36, 41, 44, 61, 68, 69, 125, 129.
Excise 7.
Ex-parte Judgment or Decree 4, 35.
False Evidence 3, 5, 7, 10, 14, 21, 26, 45.
Fine 1.
Forfeiture 4.
Fraud 17.
Ghatwals 3, 8, 9, 10.
Gomashta 2.
High Court 13, 14, 15, 20, 21, 24, 25, 26, 27, 28, 29, 39*a*, 40, 41, 42, 43, 44, 45, 49, 53, 57, 58, 63, 69, 71, 73, 75, 76, 77, 79, 81, 95, 101, 103, 104, 107, 110, 111, 112, 113, 114, 124, 123, 142, 154, 156, 159, 160, 166, 169.
Hindoo Law (Religious Ceremonies) 1, 2.
Husband and Wife 5.
Illegitimate Child 2, 3.
Indigo 3, 6, 7.
Intervenor 18, 26.
Irregularity 7.
Joinder of Causes of Action 5, 7, 8.
Judgment 5.
Julkur 8.
Khas Mehal 4.
King of Oude 1.
Kuboolent 1, 15, 38, 44, 58.
Lakheraj 7, 12, 13.
Land Dispute 6, 13, 17, 39, 48, 57.
,, taken for Public Purposes 6, 7.
Landlord and Tenant 1, 4.
Lease 10, 64.
Limitation 20, 182.
,, (Act XIV of 1859) 11, 30, 46, 120, 127, 151, 204.
,, (Act IX of 1871) 24.
,, (Reg. III of 1793 s. 14) 3.
Lost Document 1.
Lunatic 2, 15.
Maintenance 23, 34.
Manager 14.
Marriage 24, 27, 28, 29, 30, 42.
Measurement 13.
Meeras Pottah 2.
Mesne Profits 73.
Minor 26, 28.
Mokurrurée Tenure 10, 21.
Mortgage 54.
Municipal 11, 15, 22, 24, 25, 29.
Mutation of Names 1, 2.
Notice 9.
Nonsuit 1.
Nuisance 18.
Occupancy 56.
Partition 12.
,, (Butwarra) 18, 27, 28, 29, 33, 36.
Partnership 4.
Pauper Suit or Appeal 8.
Pension 1.
Plaint 4, 6, 14, 43.
Police 8.
Practice (Appeal) 7, 25, 32, 37, 39, 46, 52, 68, 95.
,, (Attachment) 8, 9, 63, 64, 65*a*, 68.
,, (Criminal Trials) 24, 27, 28, 34, 36, 37, 38, 40, 46, 52, 58, 63.

JURISDICTION (*continued*).

See Practice (Execution of Decree) 84, 56, 80, 92, 98, 113, 128, 131, 134, 138, 166, 220, 225, 237, 243.
,, (Possession) 7.
,, (Review) 2, 12, 87, 96, 98.
Principal and Agent 45.
,, ,, Surety 27.
Promissory Notes 4, 5.
Public Policy.
Putnee Talook 19, 22, 24, 25, 44, 64, 78.
Recognizance 12, 17.
Recorder 1, 2, 4, 5, 6, 7, 8, 9.
Refund 2, 3.
Registration 97, 108, 113, 116, 153.
Rehearing 7.
Relinquishment 10.
Remand 24, 30.
Rent 27, 78, 84.
Res Judicata 8, 63, 83.
Resumption 1, 7.
Revival of Complaint 1, 2, 3.
,, of Suit or Appeal.
Sale 3, 42, 57, 65, 66, 80, 81, 96, 115, 125, 126, 128, 134, 147, 157*a*, 162, 190, 207, 221, 232.
,, Law (Act XI of 1859) 12, 20, 27.
Salt 1.
Salvage 3.
Security 23, 29.
Set-off 3.
Settlement 22.
Sheriff 5.
Shikmee 1, 2.
Small Cause Court 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 26, 33, 39, 40.
Special Appeal 3, 4, 20, 23, 25, 39, 60, 67, 75, 81, 97*a*, 101, 139, 151, 164.
Specific Performance 7.
Splitting Cause of Action 12.
Stamp Duty 52, 68.
Stolen Property 7.
Sub-Lease 3.
Succession 2.
Summary Award for Rent 4.
,, Trial 3, 9.
Supreme Court 2.
Survey 3.
Tanjore.
Timber 3.
Tort 2.
Under Tenures 5, 9.
Value of Suit or Appeal, 3, 4, 6, 7, 17.
Will 65.
Withdrawal of Suit or Appeal 2, 8, 10.
Zemindar 1, 2.
Zemindaree Dâk 3.
Zur-i-peshgee Lease 1, 9, 17, 30.

Jury.

1. A Judge may give the — his opinion of the guilt or innocence of the prisoner if he shows them that the decision rests with them.—W. R. Sp., Cr., 5.

2. Composition of — in trial of a native Christian.—1 W. R., Cr., 2.

3. Mode of directing a —.—1 W. R., Cr., 2, 26; 5 W. R., Cr., 68; 6 W. R., Cr., 72; 7 W. R., Cr., 108; 8 W. R., Cr., 87; 9 W. R., Cr., 51, 72; 25 W. R., Cr., 36, 54.

4. Warning in case of substantially consistent evidence, not a misdirection to the —.—1 W. R., Cr., 17.

5. The omission of the Judge to enter into details regarding the identification of stolen property is not a misdirection to the —.—1 W. R., Cr., 22.

6. — not entitled to pronounce as to what was law, or to define their idea of a crime.—1 W. R., Cr., 50 (4 R. J. P. J. 124).

7. Verdict of —, though against the weight of evidence, cannot be refused by Judge: *e.g.* where in a trial for robbery the — bring in a verdict of guilty of theft, the Judge cannot refuse to receive it as contrary to the evidence.—2 W. R, Cr., 13 (4 R. J. P. J. 166).

8. There is no misdirection, in a case of false evidence, in a Judge pointing out to the — the contrast between the evidence for the prosecution and the prisoner's denial of the charge and refusal to examine the witnesses in attendance, so long as the Judge left it to the — to decide between the opposing statements and to credit whichever they thought most worthy of belief.—2 W. R., Cr., 60 (4 R. J. P. J. 369).

9. — may ignore the graver charges on which a prisoner is tried and find him guilty of a lesser one on the evidence.—3 W. R., Cr., 41.

10. It is in the province of a — to weigh the evidence as to its truth or falsity and to judge of the intention.—3 W. R., Cr., 58.

11. A Judge ought to explain to the — the legal construction to be put on a document relied on by the prosecution.—3 W. R., Cr., 69.

12. The statement of a prisoner, who afterwards repudiated it as made under compulsion, should not have been submitted to the — as a confession.—1 W. R., Cr., 1.

13. Various cases in which it was held that there was no misdirection to the —.—5 W. R., Cr., 1, 3, 13; 7 W. R., Cr., 22, 105; 12 W. R., Cr., 51, 80; 13 W. R., Cr., 23; 17 W. R., Cr., 45; 25 W. R., Cr., 51.

So where it was held that there was misdirection.—8 W. R. 68; 10 W. R., Cr., 7; 16 W. R., Cr., 20 23 W. R., Cr., 21.

14. In a case of false evidence, it is not necessary for the Judge in his charge to show how the false statements, even if made intentionally, were material in the case.—6 W. R., Cr., 81.

15. A Judge ought to record distinctly whether or not he agrees in the verdict of the —.—7 W. R., Cr., 6.

16. A Judge has no power to control the verdict of the —.—7 W. R., Cr., 22.

17. In charging a — in a case of culpable homicide not amounting to murder, the Judge should call upon the — to state which description of culpable homicide they consider the accused to have committed.—12 W. R., Cr., 35; 15 W. R., Cr., 18.

18. A Judge, in summing up, is bound to advise the — on questions of fact, and may tell the — the impression which the evidence has made upon his own mind.—13 W. R., Cr., 34.

19. A Judge ought not to introduce into his direction to the — any question as to recommending the prisoner to mercy, but should leave that entirely to the —.—14 W. R., Cr., 46.

20. The proceedings upon a trial by — in the Mofussil how to be construed.—14 W. R., Cr., 59.

21. Finding by — how to be returned.—*Ib.*

22. A — appointed under s. 310 Act XXV of 1861 is not legally constituted when the Magistrate appoints only the foreman of the —.—16 W. R., Cr., 23.

23. The award of the — under the same section long after the time fixed for giving an award, is illegal and cannot be upheld by a Magistrate, who should in such a case take up the case himself and decide it.—*Ib.*

24. The allowing of an objection to a juror is in the discretion of the Court.—16 W. R., Cr., 66.

25. There is no right of appeal from the decision of a — appealed under s. 310 Act XXV of 1861.—16 W. R., Cr., 66.

26. It is no misdirection on the part of a Judge in not calling the attention of the — to cls. 1 and 2 s. 100 Penal Code, when he particularly called attention to cl. 6.—17 W. R., Cr., 45.

27. *Quære.* Whether the accused should have notice of any action proposed to be taken by the High Court under s. 263 Act X of 1872, when the Sessions Judge, differing

JURY (*continued.*)

from a majority of the — in a verdict of acquittal, referred the case to the High Court under that section to be dealt with as an appeal.—19 W. R., Cr., 38.

28. Where the Sessions Judge, differing from the — in a verdict of acquittal, refers the case to the High Court under s. 263 Act X of 1872, the High Court will not interfere without the clearest proof that the — were mistaken. 19 W. R., Cr., 45, 57; 20 W. R., Cr., 16, 70, 73; 21 W. R., Cr., 4; 24 W. R., Cr., 80.

29. A Sessions Judge may, under s. 263 Act X of 1872, submit to the High Court a case in which he disagrees with the — in their finding of facts as well as when he complains that the — has not followed his directions as to the law.—20 W. R., Cr., 1.

30. In a case referred to the High Court under s. 263, where the Sessions Judge differed from the verdict of the —, the right to begin was held to be on the party who called for a conviction.—20 W. R., Cr., 33.

31. A Judge ought not to put questions to any of the — as to his reasons for the verdict he has given.—20 W. R., Cr., 50.

32. In dealing with a reference made by a Sessions Judge under s. 263 Act X of 1872 in consequence of his disagreeing from the verdict of the —, the High Court must deal with it as an appeal by the prosecution, and has authority to convict the accused person on the facts and to pass sentence accordingly: s. 257, by which the Court has to decide which view of the facts is correct, being read as qualified by s. 263.—20 W. R., Cr., 70.

33. S. 263 Act X of 1872 contemplates only a case in which the Sessions Judge, disagreeing with the —, refers the whole case without rendering any order of acquittal or conviction; but not a case where the Sessions Judge has approved of a verdict on some of the charges and after finally acquitting and discharging the accused as to these charges, refers the case as to another charge to the High Court.—20 W. R., Cr., 73.

34. There can be no verdict delivered and no verdict finally recorded until the last of the questions put by the Sessions Judge under s. 263 is answered, and the verdict then given should be entered as the verdict of the —.—21 W. R., Cr., 1.

35. The question of proof of previous conviction is one of fact which ought to go to the — and must be determined by a —.—21 W. R., Cr., 10.

36. A Magistrate, acting under s. 523 Act X of 1872, should exercise his own independent discretion in selecting the members of a —, and the persons so selected by him should not be nominees of the party interested in upholding the Magistrate's order.—21 W. R., Cr., 43.

Nor the complainant and his witnesses.—22 W. R., Cr., 47.

37. A Magistrate has not power, under s. 523 Act X of 1872, to appoint a fresh — merely because the first — failed to send in their report.—21 W. R., Cr., 54.

38. Where a Magistrate ordered a person either to remove an obstruction to a path leading to a road or to show cause why such order should not be enforced, and subsequently, on the application of the party charged, appointed a — under s. 523 Act X of 1872,—*Held* that the question for the — to try was whether the first order of the Magistrate was reasonable and proper, and for that purpose to consider whether there was a *bonâ fide* question between the parties as to the right of way over the land.—21 W. R., Cr., 61.

39. A Magistrate who refers a matter as to whether a pathway is a thoroughfare or not for the consideration of a — under s. 523, is bound to make an order upon the report of the —.—22 W. R., Cr., 86.

40. A party who objects to the verdict of a —, ought to give reasonable *primâ facie* ground for the opinion either that the — did not in fact apply a judicial discretion to the case, or that the verdict was such as the — could not have arrived at by a proper exercise of their discretion upon the materials before them.—23 W. R., Cr., 15.

41. The words "heads of the charge to the —" in s. 464 Act X of 1872 must be construed reasonably and include such statement on the part of the Sessions Judge as will enable the Appellate Court to decide whether the evidence has been properly laid before the — or whether there has been any misdirection.—23 W. R., Cr., 32.

42. The law requires a juryman to exercise his own understanding on the case submitted to him, and to decide on evidence.—25 W. R., Cr., 4.

43. Wherever trial by — exists, the verdict of the — must be accepted and must stand unless it is manifestly and certainly wrong.—25 W. R., Cr., 25.

44. Where, under s. 523 Act X of 1872, a Magistrate receives the report of a —, he is bound to act according to the recommendation of the majority.—25 W. R., Cr., 31.

See Adultery 5.
Appeal 75.
Evidence 59, 65.
" (Corroborative) 2.
False Evidence 22, 49.
High Court 32*a*, 32*c*, 33, 34, 82, 133, 135, 140, 158.
Insanity 8.
Irregularity 9.
Jurisdiction 457.
Lunatic 22, 23.
New Trial 3.
Nuisance 10, 11, 18.
Practice (Criminal Trials) 3, 4, 16, 19, 33, 39, 49.
Rape 2.
Right of Appeal 2.
Rules of Practice 16, 17.

Justice of the Peace.

See High Court 111.

Jynteah.

See Jurisdiction 474.

Kabin-namah.

See Dower 14, 28.

Keonghur Raj.

According to the family custom of the —, the sons of a Rajah by wives of a lower caste than the Rajah, rank after the sons by wives of the same caste as the Rajah.—2 W. R. 232.

Khadim.

See Endowment 18.
Kubooleut 38.
Onus Probandi 120.

Khal.

See Limitation 159.
Possession 17.

Khamar Land.

See Enhancement 113.
Occupancy 72, 91, 105.

Khas Mehal.

1. There is no relation of landlord and tenant between the Government and the owner of a — in the 24 Pergunnahs. The latter is the landlord to the ryots, and is not himself a ryot. The right and title of the Government is to the rent, but does not include a right to the possession of the lands, though such a right might arise by forfeiture or extinction of the ownership; and the *onus* is on the Government to prove its claim to the possession of the lands.—(P. C.) 7 W. R., P. C., 21 (P. C. R. 676).

2. A holding as farmers of a — pending settlement, is not an adverse proprietary holding to be included in computing limitation.—1 W. R. 55.

3. The holder of resumed invalid lakheraj land within a

Khas Mehal (*continued*).

Government — is bound to pay rent according to the settlement of the Revenue authorities under Reg. VII of 1822, until he sues in the Civil Court to set aside that settlement, or sues under Act X for an abatement or re-assessment of rent.—6 W. R. (Act X) 107.

4. A strong claim to consideration, if it does not amount to a legal title to the land, cannot entitle the Civil Court to interfere with the act of the Collector in granting a pottah of a Government —.—25 W. R. 93.

See Churs 69.
Ejectment 88.
Evidence (Estoppel) 26.
Farmer 2.
Limitation 79*a*, 242.
Registration 14.
Sale 102.

Khatri.

See Ramnuggur.

Kidnapping.

1. The consent of a kidnapped person is immaterial; nor is it necessary for a conviction under s. 361 Penal Code to prove force or fraud.—2 W. R., Cr., 5. *See also* 7 W. R., Cr., 36.

2. So also as to — or abducting a girl under 16 years to compel her marriage.—2 W. R., Cr., 61 (1 R. J. P. J. 370); 3 W. R., Cr., 9 (1 R. J. P. J. 568).

3. So also under ss. 363 and 366.—3 W. R., Cr., 15 (1 R. J. P. J. 571).

4. A person carrying off, without the consent of her father, a girl betrothed to him by the father, is guilty of — punishable under s. 363.—4 W. R., Cr., 7.

5. S. 368 refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers.—6 W. R., Cr., 17.

6. A conviction under both ss. 363 and 366 is not good. —7 W. R., Cr., 56.

7. An enticing away of a child playing on a public road is — from lawful guardianship.—7 W. R., Cr., 98.

8. The evidence of a kidnapped girl, if thoroughly credible, is legally sufficient for a conviction for —.— 7 W. R., Cr., 104.

9. The maximum sentence prescribed for — should only be awarded in a case of the most aggravated nature.— 8 W. R., Cr., 3.

10. A conviction under both ss. 363 and 369 is not good. —8 W. R., Cr., 35.

See Compounding 8.
Cumulative Sentences 8.

King of Delhi.

See Jurisdiction 444.
Limitation 172.

King of Oude.

1. S. 4 Act VIII of 1862 does not prevent the Civil Court from entertaining a suit against the ex — without the consent of the Government.—7 W. R. 168.

2. A suit against the —, commenced without the consent of the Government, was held to be null and void, even though it had been instituted, and judgment had been given, before the passing of Act XIII of 1868.—11 W. R. 116.

Kist.

See Instalments.
Sale Law (Act XI of 1859) 29.

Kistbundee.

See Instalments.

Kolachar.

See Family Custom.
Ghatwals 5.
Hindoo Law (Inheritance and Succession) 90.
Hosaipore Raj.

Kubala.

See Deed of Sale.
Kut-Kubala.

Kubooleut.

1. In a suit for a —, where the defendant admits partial tenancy, the onus is on him to prove non-tenancy as to the rest. The Collector has jurisdiction in such a case.— W. R. F. B. 15 (1 Hay 228, Marshall 54).

2. In a suit for a — the Judge cannot fix the term.— W. R. F. B. 131.

3. In a suit for a —, notice not necessary.—(F. B.) W. R. F. B. 183. *See* 12 W. R. F. B. 27.

4. A landlord is not entitled, under s. 9 Act X of 1859, to require his tenant to give him a —, unless the tenant holds under a pottah or the landlord has tendered a pottah.— Marshall 400. *See also* 1 W. R. 81, 2 W. R. (Act X) 96, 12 W. R. F. B. 27.

5. A suit for rent was brought against the guardian of a minor, and the Court gave a decree, founded on a — given by the ancestor of the minor. After the minor had come of age, a suit was brought against him for subsequent arrears under the —. *Held* that he was estopped by the decree in the former suit from denying the validity of the —.— 2 Hay 593 (Marshall 476).

6. The heir of a lessee is liable to the lessor for rent payable by virtue of a — notwithstanding he is not in possession.—*Ib.* *But see* 9 W. R. 582.

7. A purchaser at a sale in execution of decree is not entitled to obtain a from a ryot who holds under a lessee of the former proprietor and who has never paid rent to, and to whom no pottah has been tendered by, the purchaser. —2 Hay 594.

8. The decision of a Lower Appellate Court holding the defendant in a suit on a — found to have been signed, not by the defendant but by a third party, responsible for the signature of such third party although there was no evidence of his authority to sign, was held to be erroneous in point of law and to be a ground of special appeal.—2 Hay 663 (Marshall 556).

9. In a suit for a — under cl. 1 s. 23 it must be shown and not presumed that a contract existed by which the relation of landlord and tenant was created.—1 R. J. P. J. 210, 3 W. R. (Act X) 16 (4 R. J. P. J. 398). *See also* 7 W. R. 2, 10 W. R. 407, 16 W. R. 133, 296.

10. Notice is not essential in a suit for a —; nor is it necessary, when a defendant does not claim to be a ryot having a right of occupancy, for the plaintiff to state on what grounds he claims a — at enhanced rate.—W. R. Sp. (Act X) 2 (2 R. J. P. J. 12). *See also* W. R. Sp. (Act X) 36, 60; 2 W. R. (Act X) 66.

11. A proviso inserted in a — that the tenant is to pay rent for any excess land found in his possession, cannot vary the strict terms of the —.—2 R. J. P. J. 82.

12. There is nothing illegal in a suit for a — against jotedars.—W. R. Sp. (Act X) 13 (2 R. J. P. J. 84).

13. Where defendants fail to prove the — they set up, it is not necessary to go into other matters.—Sev. 93.

14. A ryot is not liable to execute separate kubooleuts for portions of the rent to the different shareholders.— Sev. 96*a*. *See also* 11 W. R. 25, 393; 15 W. R. F. B. 21. *But see* 14 W. R. 432.

15. A Collector cannot order the insertion in a — of a condition that the tenure shall be saleable under Reg. VIII of 1819.—3 R. J. P. J. 35.

16. Before a — can be sued for, a pottah must be tendered, but the non-tender of a pottah cannot be urged as an objection for the first time orally in special appeal.— W. R. Sp. (Act X) 44 (2 R. J. P. J. 207).

17. A landlord cannot sue for a — in respect of a portion of land held under an *istemraree* or other pottah.—*Ib.* *See also* 6 W. R. (Act X) 103, 8 W. R. 467. *But see* 40 *post.*

KUBOOLEUT (*continued*).

18. A landlord cannot sue for a — for past years.—W. R. Sp. (Act X) 116. *See also* 8 W. R. 338.

19. A *primâ facie* rent-free holding must be set aside in some other suit before a — can be obtained.—1 W. R. 15 (3 R. J. P. J. 138), 5 W. R. (Act X) 62, 8 W. R. 188.

20. In a suit for a — at enhanced rates, the pergunnah measurement should be authoritatively determined, and the decree should not be for less land than the ryot admits possession of, nor for more than plaintiff claims.—1 W. R. 24, 5 W. R. (Act X) 59.

21. S. 9 Act X of 1859 does not require that a pottah should be tendered before a suit for a — can lie, but merely that the condition on which the suit is to be decreed is that a pottah shall be given in exchange.—1 W. R. 49, 4 W. R. (Act X) 23, 5 W. R. (Act X) 88, 7 W. R. 282, 8 W. R. 473. *See* 12 W. R. F. B. 27.

The offer to execute a — must be an unconditional one.—25 W. R. 175.

22. A purchaser from a zemindar cannot as of course call upon a putneedar for a fresh —.—1 W. R. 171 (3 R. J. P. J. 227).

23. When the relation of landlord and tenant is not clearly proved, no suit for a — will lie, but the zemindar may sue for ejectment.—1 W. R. 327 (3 R. J. P. J. 346). *See also* 8 W. R. 329, 10 W. R. 438, 19 W. R. 262, 20 W. R. 368.

24. *Quære.* Whether, in a suit for rent on a —, where the — was not proved, the High Court can interfere with the discretion of the Lower Court in decreeing the claim to the extent admitted by the defendant.—2 W. R. (Act X) 16.

Where the High Court affirmed a decision of the Lower Court decreeing as above.—20 W. R. 64.

25. A Judge can, on the appeal of one defendant, reverse an order against two defendants for the execution of a joint —.—2 W. R. (Act X) 31.

26. Until a landlord sues a ryot for a —, he can only recover whatever rent the ryot is willing to pay. But before the landlord can sue for a —, he must tender a pottah to the ryot.—2 W. R. (Act X) 56. *See* 12 W. R. F. B. 27.

27. A suit for a — cannot proceed, where a separate title is pleaded, until the question of title is decided.—3 W. R. (Act X) 3.

28. A suit for a — at an enhanced rent may be brought without notice of enhancement. But in such a suit brought without notice, the — cannot be decreed except to commence with the year following that in which the decree is given.—(F. B.) 3 W. R. (Act X) 29 (4 R. J. P. J. 165). *See also* 4 W. R. (Act X) 5, 9 W. R. 521, 10 W. R. F. B. 14, 12 W. R. F. B. 27.

29. In a suit for a — at an enhanced rent the plaintiff is restricted to the grounds mentioned in s. 17 Act X.—(F. B.) *Ib.*

30. *Quære.* Whether in a suit for a — the Court can fix the rent for more than one year.—3 W. R. (Act X) 142.

31. A suit for a — at an enhanced rate, to take effect prospectively from date of suit, may, as provided by s. 31 Act X, be brought at any time during the tenancy, irrespective of the time of service of notice of enhancement.—4 W. R. (Act X) 5.

32. A landowner cannot claim a — from a tenant having no right of occupancy, *i.e.* a mere tenant-at-will.—4 W. R. (Act X) 46.

33. In a suit for a — at an enhanced rate, a claim to the *nerikh* may be considered to be a claim to the pergunnah rate, *i.e.* the rate paid by the same class of ryots for similar land in the neighbourhood.—4 W. R. (Act X) 47.

34. Suits may be brought under cl. 1 s. 23 Act X against parties other than mere ryots in the ordinary sense of the term.—5 W. R. (Act X) 19.

35. In a suit for a — at an enhanced rate, where the rents of the adjacent lands have already been adjusted, the enhancement will depend on the rates paid by those lands supposing them to be of the same kind, and not on any doctrine of proportion.—5 W. R. (Act X) 57.

36. In a like suit, where the defence is that the tenure is *kaimee* and not liable to enhancement, the Court ought to decide the question of liability before going into that of the rates.—5 W. R. (Act X) 59.

37. In order to maintain a suit for a — at enhanced rates, the previous tender of a pottah is not necessary.—5 W. R. (Act X) 89.

38. A suit by the *mutwalee* of a mosque to obtain a — from a *khadim* or subordinate servant attached to the mosque will not lie under Act X.—6 W. R. (Act X) 9.

39. The purchaser of an under-tenure under s. 105 Act X may sue for a — at rates paid for similar lands in the neighbourhood.—6 W. R. (Act X) 15.

40. The purchaser of an undisputed share of an estate may obtain from the Revenue Courts a decree for a — in respect of his share.—6 W. R. (Act X) 53, 10 W. R. 307, 14 W. R. 432. *But see* 17 *ante* and 15 W. R. F. B. 21.

41. A suit for a — will not lie for a right to fish in certain waters.—6 W. R. (Act X) 101.

42. In a suit for a — at an enhanced rent, where, in spite of the deficiency of the crops, their value has increased owing to additional care and labor expended by the ryot, the Court must determine what the ryot is entitled to as a set-off, and whether the zemindar is not entitled to some portion of the increased value in the shape of enhanced rent.—6 W. R. (Act X) 103.

43. Where a decree under ss. 22 and 78 Act X for the ejectment of a ryot from the plots of land was executed against only two of the plots, the pottah is not in force as regards the third plot also and the landlord may sue for a — in respect of it.—7 W. R. 8.

44. A suit will lie under Act X of 1859 for a — for the payment of the rents of a fishery.—7 W. R. 93.

45. In deciding a suit for a — at an enhanced rent for 5 years, the average of the past 5 years should be taken into consideration.—7 W. R. 234.

46. Landlords holding a joint — cannot institute separate suits and call upon Collector, on the original contract, to apportion the rent.—8 W. R. 200. *See also* 10 W. R. 411, 11 W. R. 373.

47. A separate — cannot be claimed for uncultivated lands already comprised in a lease, on the ground that such uncultivated lands have now been brought into cultivation.—8 W. R. 219, 467.

48. Where the tenure of a defendant is declared liable to assessment in a suit between him and the plaintiff's vendor, the plaintiff can sue for a — as he is thereby only carrying out the provisions of the decree obtained in that suit.—8 W. R. 473.

49. A plaintiff suing for a — against a cultivating ryot who is found to hold the tenure as a *howala* (an intermediate and higher grade of tenure), must fail unless he can get rid of incumbrances created by his predecessor.—8 W. R. 475.

50. A landlord suing for a — at a specific rate of rent, and failing to show that he is entitled to that rate at the time of the decree, is not entitled to a decree for a — at a less rate.—(F. B.) 10 W. R. F. B. 14. *See* 10 W. R. 43, 77, 213; 11 W. R. 35, 164; 15 W. R. 240; 17 W. R. 388.

So *a fortiori* the landlord must show that the tenant is holding the particular land specified.—9 W. R. 521.

The ruling applies equally whether the difference be in the quantity of land or in the rate of rent claimed.—13 W. R. 280.

And also to a suit for a — at a given rent where the rate claimed is above what is fair and equitable even though the rent is asked only for excess land.—15 W. R. 289.

The principle of the above decision applies as well to an invalid lakheraj as to ryots whose rents are to be enhanced.—12 W. R. 451, 19 W. R. 262, 21 W. R. 224.

The principle of the same ruling was applied to a suit for a pottah.—15 W. R. 420.

The above F. B. ruling only applies to cases where there has been no notice of enhancement.—18 W. R. 279.

51. A plaint which does not specify the time at which the — sued for is to commence, does not disclose a sufficient cause of action and should be returned.—(F. B.) 10 W. R. F. B. 14. *But see* 55 *post* and 11 W. R. 105, 430.

52. In a suit for a — at enhanced rates, the Court's determination between plaintiff and an intervenor under s. 77 Act X on a matter of title, ought not to govern the decision between plaintiff and defendant.—10 W. R. 97.

53. Where a tenant under a mouroseedar, on being sued by the zemindar for a —, gives the mouroseedar notice to appear, the latter is not bound to appear.—10 W. R. 324.

54. A suit for arrears of rent under a lease in English form will lie under Act X although no separate — is executed.—*Ib.*

55. Where a plaint asks for a — without specifying the

Kubooleut (*continued*).

date from which the term is to commence, the Court may fix the proper term.—10 W. R. 362. *But see* 51 *ante*.

56. An auction-purchaser cannot compel the holder of a tenure in perpetuity to execute a — acknowledging himself to be a tenant for one year at an enhanced rent.—10 W. R. 421.

57. A landlord cannot sue to compel a ryot to execute a — unless he first tenders a pottah to the ryot such as he is entitled to receive under s. 9 Act X; and a suit for a — at an enhanced rent cannot be supported without a previous notice under s. 13.—(F. B.) 12 W. R. F. B. 27. *See* 13 W. R. 461, 14 W. R. 172.

58. According to s. 9 Reg. XIX of 1793, a decree for resumption under s. 30 Reg. II of 1819 does not entitle the proprietor of the lakheraj lands to bring a suit for a — in a Revenue Court before the revenue has been fixed and he has agreed to pay the same.—12 W. R. 442. *But see* 15 W. R. 345, 440, 474; 17 W. R. 363.

59. The purchaser of a fractional share of an undivided estate held under a service tenure was held not entitled to sue for a — when the tenant was willing to perform the service which he was required to render.—(F. B.) 15 W. R. F. B. 21.

60. When a suit for a — at an enhanced rent is decreed without any term being fixed by the Court, the — executed is inoperative beyond the year of demand.—15 W. R. 124. *See also* 9 W. R. 592.

61. Where the zemindar took a — for a specified term, it was held that the lease was for that term, and that the absence of a pottah in writing could not release him from his obligation under the —.—16 W. R. 147.

62. According to s. 81 Act X of 1859, a decree for a — is evidence of the rent which the defendant is liable to pay only when he is called upon to execute such — but refuses to do so.—20 W. R. 273, 21 W. R. 33, 24 W. R. 447.

63. No consideration for a — is necessary beyond the right of occupation of the land.—20 W. R. 384.

Where no consideration was shown, nor possession, nor receipt of rent, the — was held inoperative.—22 W. R. 299.

64. A — in which the tenant undertook to preserve certain trees in a jungle and not to injure them in any way, and to pay 2000Rs. if he relinquished the talook after destroying the jungle, was construed to contain two distinct covenants, the second being a covenant not to injure the trees, on breach of which damages could be recovered.—21 W. R. 366.

65. No suit for a — or *surkhut* will lie in the case of a house situated in a town.—24 W. R. 271.

See Abatement 8.
Appeal 27, 65, 96.
Benamee 23.
Bond 11.
Breach of Contract 3, 18.
Churs 48.
Construction 46.
Damages 49.
Declaratory Decree 45.
Endowment 19.
Enhancement 141, 195, 200, 229, 280.
Evidence (Admissions and Statements) 31.
,, (Documentary) 23.
,, (Estoppel) 1, 20, 41, 43, 44, 67, 71, 73, 121.
Forgery 2.
Hajuts 1.
Instalments 24.
Intervenor 8, 21, 30, 40.
Jurisdiction 42, 76, 130, 194, 242, 262, 322, 334.
Landlord and Tenant 10, 21, 29, 49, 53.
Measurement 8.
Nowabad 2.
Onus Probandi 37, 250.
Pottah 20.
See Putnee Talook 38, 72.
Registration 36, 51, 82, 128, 130.
Rent 50, 69, 84, 97, 101.
Resumption 29.
Suit on Document 2, 3.
Summary Award for Rent 2.

Kudeemee.

See Enhancement 128.
Practice (Possession) 11.
Transferable Tenure 11.

Kurpurdauz.

See Jurisdiction 13, 456.
Service 5.

Kurruckpore.

See Ghatwals 6, 7, 8, 12, 25.

Kut-Keenadar.

See Co-sharers 3.
Declaratory Decree 27.
Ejectment 98.
Sub-lease 2.

Kut-Kubala.

See Mortgage 86.

Labor.

See Breach of Contract 13.
,, ,, of Service.
Contract for Labor.
Work and Labor Done.

Laches.

1. Any — of a defendant does not absolve plaintiff from fully proving his case.—1 W. R. 119.

2. Court officers are personally liable for fruitless execution of decrees or orders caused by their own —.—10 W. R. 264.

See Contract 44.
Costs 89.
Damages 53.
High Court 161.
Interest 14.
Lease 20.
Limitation 24.
,, (Act XIV of 1859) 85, 221.
,, (Execution of Decree) 14.
Principal and Surety 28.
Witness 88.
Zur-i-peshgee Lease 36.

Lakheraj.

1. In a suit to recover possession of — lands from which the plaintiff alleges he has been illegally dispossessed by the defendant, where the defendant denies the ouster but claims the lands as appertaining to his *mál* lands, a reference to the Collector, under s. 30 Reg. II of 1819, to report upon the validity of the summons filed by plaintiff, is wholly unnecessary, since the question at issue is not whether the lands are *mál* or —, but whether plaintiff ever was in possession and ever was ejected by defendant.—1 Hay 419.

2. A zemindar cannot sue to resume, under s. 30 Reg. II

LAKHERAJ (*continued*).

of 1819, — lands held under grants in excess of 100 beegahs. —*Ib.* 421. *See also* W. R. Sp. 132.

3. In a suit to resume — lands, the defendant having founded his case on documentary evidence, cannot establish a case founded on the presumption arising from the fact of his and his predecessors holding the land rent-free before 1790.—2 Hay 99.

4. A zemindar coming into Court, under s. 10 Reg. XIX of 1793, for possession of *mál* lands fraudulently alienated as — after 1790, must first establish that the occupant of the land has paid rent subsequent to that date.—2 Hay 565.

5. In a suit to recover possession of land from which the plaintiff, claiming to be a lakherajdar, has been forcibly evicted by the zemindar, the plaintiff must show a *primâ facie* case of — tenure.—2 Hay 649 (Marshall 550).

6. A decree in a suit for resumption must be obtained before rent can be recovered against a tenant holding under a — tenure.—2 Hay 663 (Marshall 554).

7. A person wishing to put another in proof of his title, not knowing whether his — tenure originated before or after 1790, is not bound to sue under s. 28 Act X of 1859, but may proceed under s. 30 Reg. II of 1819.—1 R. J. P. J. 102 (Sev. 68).

8. The mere fact of defendant holding certain — lands under sunnuds apparently genuine, is sufficient to bar the plaintiff from assessing him without a resumption suit.—W. R. Sp. (Act X) 29 (2 R. J. P. J. 153).

9. In a suit for resumption, the zemindar having failed to prove either that the land was held, as claimed by the defendants, under several grants or titles, or that it was not held by the defendant as *de facto* — prior to 1st December 1790,—*Held* that, even assuming that the defendant had failed to show that he had a valid title and that his plea of limitation had failed inasmuch as he did not show that he held possession from before the 1st December 1790, and that the land was therefore liable to resumption, it would be consistent with the facts, as proved by the plaintiff, that the Government, and not the zemindar, was the party entitled to resume.—Sev. 115.

10. There is nothing in s. 10 Reg. XIX of 1793 which precludes a proprietor of lands (and *à fortiori* of a — mehal) from giving any part of his estate to another on any terms he chooses, even free from the payment of rent. —Sev. 332.

11. The registry of a tenure in 1802, with specification of its previous acquisition at a remote period, is sufficient proof of its existence as a — holding previous to 1790. —Sev. 733.

12. Suits for the assessment or resumption of lands alleged to be held on invalid — titles created since 1790 must be brought under s. 28 Act X of 1859; but suits for the resumption of other — tenures on the ground of invalidity of title, must be brought under s. 30 Reg. II of 1819.—3 R. J. P. J. 27, 130.

13. A person who has failed under s. 28 Act X of 1859, may still sue to resume under s. 30 Reg. II of 1819, but he exposes himself to be met by a plea of limitation.—*Ib.*

14. Oral evidence in general terms is not sufficient to establish fraud in the conversion of *mál* lands of a *putnee* into rent-free lands, so as to entitle the present putneedar to resume them as invalid —.—W. R. Sp. 137.

15. A — held prior to 1790 cannot be assessed until a declaration is obtained in a resumption suit of plaintiff's title to resume.—W. R. Sp. 204.

16. Where a zemindar engages to pay a certain amount of revenue on certain — lands on condition of Government stopping resumption proceedings in respect of such lands, he has a right under that engagement to resume and assess invalid — tenures below 100 beegahs in extent, whatever had been the nature of agreements with Government in previous years; but he cannot resume and assess lands of greater extent than 100 beegahs covered by one sunnud. —W. R. Sp. 232.

17. Where a plaintiff sues a zemindar to resume and assess — land, he is bound to give some evidence of his title to the land before the Court can be warranted in ordering a local enquiry.—W. R. Sp. (Act X) 119 (3 R. J. P. J. 109).

18. A suit to obtain possession of land held under an invalid —title, is bound by 12 years' limitation, even under cl. 12 s. 1 Act XIV of 1859.—1 W. R. 29.

19. A — tenure must be first shown to have a real existence before any question of the validity of the — can arise. —1 W. R. 330.

20. A suit for assessment against a ryot claiming no — holding, will not lie under s. 28 Act X of 1859.—1 W. R. 360.

21. A — grant of land made by a zemindar is void under s. 10 Reg. XIX of 1793, except when made for a consideration beneficial to the estate (*e.g.* use by the tenants of the water of a tank dug by the grantee).—(F. B.) 2 W. R. 15 (4 R. J. P. J. 26). *But see* 27 *post.*

So also the grant of land by the general manager of a Company, for the purpose of digging a tank, although not charged with rent, was held not to be —, because the water thus supplied was a sufficient consideration, being in the nature of a rent reserved.—25 W. R. 245.

22. But the above F. B. ruling does not apply to a case where there is no proof of its having been either the condition of the grant or the intention of the grantor that the tank should be a public benefit.—2 W. R. 295, 3 W. R. 177.

23. A claim to — should not be thrown out merely because the — *taidad* contains no boundaries.—2 W. R. (Act X) 60 (4 R. J. P. J. 154).

24. By "a subsisting tenure" is meant one which existed before the 1st December 1790.—3 W. R. 207.

25. *Punchukee* —. *See* Enhancement 198.

26. Rival Lakherajdars. *See* Resumption 30.

27. A — grant made by a zemindar of a specific portion of lands, after a permanent settlement of the estate to which it belongs, is valid as against the grantor and his heirs, or a purchaser by private sale of the estate; and such purchaser is not, under s. 10 Reg. XIX of 1793, entitled to resume the land.—(F. B.) 9 W. R. 1. *See* 12 W. R. 361.

28. Where a zemindar having resumed a — holding of plaintiff's ancestor, afterwards causes it to be sold in execution of a decree as the — of his debtor, the judgment in the resumption suit is no evidence of plaintiff's title as against the auction-purchaser.—10 W. R. 112.

29. The production of a — sunnud is not necessary to prove that land is held —; the fact may be legally established by long and uninterrupted possession without payment of rent.—10 W. R. 461.

By oral evidence notwithstanding the failure of documentary proof.—14 W. R. 108.

30. Reg. XIX of 1793 refers to grants to hold land free of revenue, and not to grants made by a private individual free of rent.—12 W. R. 251.

31. A party holding under a *joutuck* grant containing no reservation of rent, is entitled to hold rent-free.—*Ib.*

32. Where excess land is claimed as —, plaintiff's remedy lies in a suit for resumption and assessment.—12 W. R. 439.

33. In order to be released from Government assessment, — land must be shown to have existed as — at the time of the Perpetual Settlement; proof of possession for 12 years will not be sufficient.—13 W. R. 334.

34. A *tulluk'e brihmotur* tenure is not a — tenure, a suit for the resumption of which must precede a suit for enhancement of its rent.—14 W. R. 251.

35. The mere fact of a reference to Reg. II of 1819 or that the procedure under that Reg. was adopted in part, affords no presumption that the suit was a suit for — land held under a grant prior to 1st December 1790.—15 W. R. 440, 474, 483.

36. A lakherajdar in Assam may manage his lands in any way consistently with existing Regulations, and, as holder of a resumed grant, may eject a tenant who has no right of occupancy or lease.—16 W. R. 203.

See Auction-Purchaser (Revenue Sale) 4.
Boundary 4.
Churs 22.
Criminal Trespass 6.
Dismissal of Suit or Appeal 1*a*.
Ejectment 5, 6, 47, 68.
Endowment 21.
Enhancement 11, 178, 278.
Evidence (Documentary) 78.
" (Estoppel) 8, 62, 126, 185.
" (Oral) 41.
Joint Stock Company 6.

LAKHERAJ (*continued*).

See Jurisdiction 6, 7, 32, 33, 34, 60, 68, 139, 155, 177, 194, 195, 483.
Khas Mehals 1, 3.
Kubooleut 19, 50.
Limitation 6, 15, 28, 29, 34, 38, 69, 101, 121, 146, 247.
„ (Act XIII of 1848) 12.
„ (Act XIV of 1859) 12, 20, 58, 65, 79, 166.
„ (Reg. III of 1793 s. 14) 7.
Measurement 18, 24.
Mortgage 65, 132, 138, 245.
Onus Probandi 6, 8, 9, 17, 22, 24, 81, 87, 94, 96, 100, 101, 105, 106, 115, 124, 135, 142, 145, 146, 169, 207, 218, 228, 242.
Partition 11, 12, 19.
Polliam.
Possession 21.
Practice (Execution of Decree) 229.
„ (Possession) 20, 26, 33, 54, 87.
Putnee Talook 3, 31, 57.
Registration 1.
Rent 29, 36, 54, 58, 76, 81.
Res Judicata 66, 80.
Resumption.
Right of Property 7.
Right to Sue 11.
Sale 63, 167.
Service Tenure.
Settlement 4, 11, 13, 22.
Shikmee 4.
Specific Performance 2.
Stamp Duty 37.
Under Tenures 4, 13, 18.
Zemindar 5.

Land.

1. The maxim of English law, that what is at any time affixed to the — becomes a part of it, is not recognized by the Statute or Common Law of India; and in all actions connected either with the revenue or rent of the —, or with its sale and purchase, it has never been held valid that buildings and erections, by whomsoever made, should go absolutely and necessarily with the —.—Sev. 53. *See also* (F. B.) 6 W. R. 228, 15 W. R. 360. *See contra* 1 W. R. 277, 2 W. R. 123.

2. The right of property in — is not necessarily affected by change of fiscal boundary of a district, or of natural features of the locality.—1 W. R. 260.

3. Injury to sub-soil. *See* Damages 50.

4. *Quære.* Whether, when actual possession of — is the subject of a decree, the things on the — go with the —.—5 W. R., Mis., 49.

5. Excess Land. *See* Assessment 4, 5; Boundary 14; Encroachment; Enhancement 134, 162, 182, 189, 197, 212, 244, 255, 265; Ghatwals 3, 21; Jurisdiction 248; Kubooleut 50; Lakheraj 32; Limitation (Act XIV of 1859) 263; Mesne Profits 106; Mokurraree Tenure 2, 12; Practice (Execution of Decree) 152; Rent 85.

6. *Bhurrat* — or — capable of occupation. *See* Possession 17.

7. The High Court in special appeal declined to interfere with the Lower Appellate Court's finding rejecting the oral testimony of plaintiff's witnesses uncorroborated by any documentary evidence of title to the — sued for.—10 W. R. 204. *But see* Evidence (Oral) 29, 35, 39.

8. Lease of — for building purposes. *See* Lease 30.

See Attached Property 1.
Auction-Purchaser (Execution Sale) 88.
See Bastoo Land.
Building 1, 2, 3, 4, 5, 6, 7, 10, 14.
Criminal Trespass 1.
Damages 1, 46, 66.
Encroachment 2
Goonjaish Land.
Hindoo Law (Coparcenary) 40.
„ Widow 40.
Joinder of Causes of Action 8.
Jurisdiction 66, 70, 85, 117, 143, 394, 396.
Land Dispute.
Land Marks.
Limitation (Act XIV of 1859) 80, 198, 206, 302*a*.
Merger 1.
Money Decree 3, 5.
Mookhtar 3.
Onus Probandi 65.
Pottah 27.
Practice (Attachment) 51.
„ (Execution of Decree) 88, 208.
Recorders 2.
Sale 124.
Small Cause Court 9.
Timber 5.
Trees 7.
Vendor and Purchaser.
Zemindar 8.

Land Dispute.

1. A regular proceeding should be recorded previous to a case of — being adjudicated under s. 318 Act XXV of 1861. The final order should only declare the party whom the Magistrate may find to be in possession, to be entitled to retain possession. To order the Police *to give possession* is irregular.—W. R. Sp., Cr., 2 (2 R. J. P. J. 37). *See* 6 W. R., Cr., 61.

2. A Magistrate exceeds his power in restoring possession to a person who has been wrongfully dispossessed. He must refer him to the Civil Court and take measures for the preservation of the peace.—W. R. Sp., Cr., 5 (2 R. J. P. J. 111).

3. S. 318 Act XXV of 1861 does not say that the party who can show in a Civil Court a possession prior to the Magistrate's award, shall be entitled to have the award set aside and to be put in possession, but only that the party out of possession must prove title.—W. R. Sp. 295 (L. R. 79), 7 W. R. 212.

4. A tenant dispossessed by order of a Magistrate under s. 318 is not bound to sue for the reversal of that order in order to recover possession.—W. R. Sp. (Act X) 54 (2 R. J. P. J. 217).

5. Where there is a dispute as to the actual possession of land, not between two co-proprietors, but between rival ryots, the Magistrate, instead of attaching the whole estate under s. 319, should settle the dispute as between the ryots. —W. R. Sp., Cr., 28 (2 R. J. P. J. 279).

6. A Criminal Court has no jurisdiction to enquire into and ascertain titles to property but ought to confine itself to the question of possession.—(P.C.) 3 W. R., P. C., 45 (P. C. R. 325). *See* 6 W. R., Cr., 61; 7 W. R., Cr., 12; 16 W. R. 240; 17 W. R., Cr., 3, 59.

7. Where a suit for possession was dismissed on the ground of plaintiff's inability to explain how, in execution of an Act IV of 1840 award for a small portion of the land in dispute, he was ousted from the whole, it was held that the Court should have tried the question of the hereditary nature of the tenure pleaded by the defendant, as well as the fact of possession and subsequent dispossession alleged by the plaintiff.—1 W. R. 32.

8. Under s. 318 Act XXV of 1861, a Magistrate is bound to enquire into fact of possession only, and to decide accordingly.—1 W. R., Cr., 25; 18 W. R., Cr., 4. *See* 6 W. R., Cr., 50; 7 W. R. 26.

With as little delay as possible.—11 W. R., Cr., 36.

LAND DISPUTE (*continued*).

9. A Judgment Magistrate cannot award possession under s. 318 Act XXV of 1861 without making a formal enquiry. —2 W. R., Cr., 31 (4 R. J. P. J. 167).

So also under s. 530 Act X of 1872.—25 W. R., Cr., 21, 74.

10. Taking the statements of both parties without recording the evidence in proof of either, is not an "enquiry" under s. 318 Act XXV of 1861.—2 W. R., Cr., 44.

11. No such enquiry should be made nor order giving possession to one side or the other passed under s. 318 save on the supposition that the — is likely to cause a breach of the peace.—*Ib.*

12. Before passing an order in a case of —, the procedure under s. 319 should be carried out.—3 W. R., Cr., 9 (4 R. J. P. J. 568). *See* 22 W. R., Cr., 81.

13. A Magistrate may direct a Deputy Magistrate vested with the full powers of a Magistrate, to pass orders in a case of — decided by him under s. 318; but he cannot withdraw the case from the file of the Deputy Magistrate, and instituting a fresh case, dispose of it himself.— 3 W. R., Cr., 53.

14. In a case of —, the Magistrate instead of merely binding down the parties to keep the peace, is bound to dispose of the question of possession under s. 318.— 4 W. R., Cr., 12.

15. The omission of a Magistrate to record a proceeding in a case of — is not a mere informality in procedure, but renders the whole of his proceedings illegal.—4 W. R., Cr., 26. *See also* 16 W. R., Cr., 74; 17 W. R., Cr., 53; 25 W. R., Cr., 74.

So under s. 530 Act X of 1872.—25 W. R., Cr., 74.

Not so under s. 283 Act X of 1872.—22 W. R., Cr., 81. *But see* 25 W. R., Cr., 74.

16. In a case of — as to a common boundary, the Magistrate, instead of attaching the boundary land, should decide the point of possession between the two parties.—4 W. R., Cr., 26.

17. In cases of — under s. 318, the Magistrate has no jurisdiction to interfere unless he is first satisfied of the existence of a dispute likely to cause a breach of the peace. —5 W. R., Cr., 14. *See also* 8 W. R., Cr., 83; 9 W. R., Cr., 61; 15 W. R., Cr., 42; 16 W. R., Cr., 71; 18 W. R., Cr., 4; 25 W. R., Cr., 74. *See* 18 W. R., Cr., 11; 19 W. R., Cr., 10.

18. In like cases, oral and not documentary evidence is what the Magistrate can safely go upon. 5 W. R., Cr., 78. *See also* 9 W. R., Cr., 61; 11 W. R., Cr., 36.

19. A Magistrate's finding that the lands in dispute are not within his but another Magistrate's jurisdiction, is not evidence; nor is the opinion of the Magistrate who has jurisdiction evidence on the question of title.—6 W. R. 137.

20. It would be highly technical and unnecessary to interfere with a Magistrate's order under s. 318 on the ground that he had not formally stated that he was satisfied of the existence of a dispute likely to cause a breach of the peace.—6 W. R., Cr., 4. *But see* 25 W. R., Cr., 74.

21. A Magistrate ought not to interfere, under s. 318, with the execution of a decree of the Civil Court. If called in to interfere at all because he is apprehensive of a breach of the peace, he should, under s. 319, maintain in possession the person who has actually been put in possession by a decree of the Civil Court.—6 W. R., Cr., 10.

22. Taking evidence in two distinct cases of — together, and refusing a full enquiry upon each one of them, was held to be an error in law.—8 W. R., Cr., 63.

23. When the Magistrate, instead of deciding a — under s. 318, may proceed to try whether the accused should not be charged with unlawful assembly.—9 W. R., Cr., 18.

24. There are no "general powers" in any law which authorize a Magistrate to issue orders directing a party to be kept in peaceable possession of land. The procedure prescribed in s. 318 should be followed.—9 W. R., Cr., 20.

25. It is not necessary that an order issued by a Magistrate under s. 62 Act XXV of 1861, whereby a breach of the peace was prevented, should be supplemented by a proceeding under s. 318.—10 W. R., Cr., 1.

26. In investigating a case of — under Chap. XXII Act XXV of 1861, the Magistrate found that one party was in possession; but there being a charge against both parties of rioting under s. 147 Penal Code, he punished both parties. *Held* that the party in possession was protected by s. 104 Penal Code in maintaining possession.— 10 W. R., Cr., 64.

27. Documents filed in a case of — under s. 318 Act XXV of 1861 cannot be accepted as evidence in a suit afterwards brought on the question of title.—11 W. R. 171.

28. When land is attached under s. 319 Act XXV of 1861, the attachment must remain in force until the right of possession has been decided by a Civil Court in a regular suit. A certificate to collect the debts of the estate under Act XXVII of 1860 gives no right to obtain possession.— 11 W. R. 532.

Nor does such certificate entitle the holder to an order under s. 530 Act X of 1872 declaring him to be in possession.—25 W. R., Cr., 16.

29. A Magistrate has a discretion under s. 320 Act XXV of 1861 whether or not he will interfere in a —; it is for the complainant to make out a sufficient case for the summary interference of the Magistrate.—11 W. R., Cr., 3.

30. A Magistrate cannot proceed under s. 318 in a case of — arising out of a fight of succession to a *muth* and its appurtenances, but should apply to the Judge under Act XIX of 1841 to appoint a curator, or make some order with regard to the property, till the right of succession is determined. The grant of a certificate under Act XXVII of 1860 does not decide the title to such land.—11 W. R., Cr., 23.

31. The interference of the Magistrate under s. 62 Act XXV of 1861 is expressly restricted to immoveable property of the kind set forth in chap. XXII.—12 W. R., Cr., 38. *See also* 15 W. R., Cr., 56.

32. S. 62 Act XXV of 1861 does not apply to cases of —, but refers specially to nuisances, etc., in which immediate action is necessary in order to avoid the risk of illegal consequences.—12 W. R., Cr., 66.

33. The power of a Magistrate to attach disputed land under s. 318 Act XXV of 1861 extends to disputes as to possession of land of which rival zemindars are in possession by their ryots.—15 W. R., Cr., 1.

So also under s. 530 Act X of 1872.—25 W. R., Cr., 18.

34. When both the disputing parties are examined and state that men are collected for the purpose of committing a breach of the peace, the Magistrate is justified, without enquiring who was the aggressor or the aggrieved party, to proceed under s. 318 Act XXV of 1861, and to take whatever steps are in his opinion necessary to prevent a breach of the peace.—15 W. R., Cr., 85.

35. Where a Magistrate, proceeding under s. 318 Act XXV of 1861, decides on the evidence in favor of a party as being in possession of the disputed land, the High Court cannot reconsider the Magistrate's decision, and decide which party is in actual possession.—15 W. R., Cr., 86.

36. A mere local enquiry and statements of parties not on oath are not sufficient data for a Magistrate's interference under s. 318.—16 W. R., Cr., 13. *See also* 25 W. R., Cr., 74.

37. When a Civil Court decree has been passed regarding any disputed land, it is the Magistrate's duty to maintain that decree, and not to interfere with the execution of it by instituting proceedings under s. 318.—16 W. R., Cr., 24.

So also reading s. 530 Act X of 1872 in the place of s. 318 Act XXV of 1861.—24 W. R., Cr., 17.

38. The mere service of a notice upon a Mofussil naib who takes no steps whatever to consult his employer or act under her directions, is not such a notice as is contemplated by s. 318 in a case of —.—17 W. R., Cr., 9.

39. In a — as to *ijmalee* property, the Magistrate has no jurisdiction to try the case under s. 318, but must proceed according to s. 26 Reg. V. of 1812 as modified by Reg. V of 1827.—17 W. R., Cr., 9, 33; 18 W. R., Cr., 36.

In like manner the Magistrate has no jurisdiction in such a case under s. 530 Act X of 1872.—25 W. R., Cr., 2. *See* 25 W. R., Cr., 16.

40. What is meant by possession in s. 318 Act XXV of 1861.—18 W. R., Cr., 11.

And in s. 530 Act X of 1872.—20 W. R., Cr., 51; 23 W. R., Cr., 45; 24 W. R., Cr., 73.

41. Where a proceeding by a Magistrate under s. 318 Act XXV of 1861 was held sufficient notwithstanding that the order passed by him was adverse to an absent co-sharer. —18 W. R., Cr., 24.

42. In a —, the Magistrate having found one party to be in possession, had no power to give the other party found not to be in possession permission to cultivate the disputed land pending the decision of a possessory action he might bring under s. 15 Act XIV of 1859.—18 W. R., Cr., 27.

Land Dispute (*continued*).

43. Notice need not be served upon all the co-sharers of an estate which forms the subject of litigation under s. 318 Act XXV of 1861. The only parties entitled to notice are those concerned in the dispute which is likely to induce a breach of the peace.—18 W. R., Cr., 51.

44. In cases of — under s. 318, it is the duty of the Magistrate, if the parties cannot produce their witnesses, to issue summonses for their attendance.—18 W. R., Cr., 64.

45. Applications to set aside proceedings under s. 318 should be made without any delay.—19 W. R., Cr., 39.

46. In a case of — commenced under the old Criminal Procedure Code, the evidence must be recorded in the manner provided for by s. 334 *et seq.* Act X of 1872.—20 W. R., Cr., 14.

47. In a case of — under s. 530 Act X of 1872, the written report of an Ameen who was deputed to hold a local enquiry is not sufficient *per se* to justify an order retaining a party in possession until ousted by due course of law.—20 W. R., Cr., 57.

A Police report is sufficient under the above section.—21 W. R., Cr., 28.

48. An award of a Magistrate under s. 318 Act XXV of 1861 cannot be set aside by a decree of the Civil Court for possession, but is by terms good to retain the party in whose favor it is passed in possession of the land until the opposite party has established his right thereto by civil suit.—21 W. R. 79.

49. When a Magistrate found that an order of his predecessor made two years ago under s. 318 Act XXV of 1861, with regard to possession of certain land, had not been complied with, he enforced the order and changed the possession in accordance with that order. *Held* that the Magistrate ought, under s. 491 Act X of 1872, to have maintained the possession which he found even if it was inconsistent with his predecessor's order, and ought not to have taken any steps in the matter unless some one actually in possession and guaranteed possession by that order, came to complain to him that his possession was threatened or had been disturbed.—21 W. R., Cr., 2.

50. In a case of — regarding a considerable area in which both parties contended that they held possession,—*Held* that the Magistrate, instead of making an order under s. 530 Act X of 1872 that the land should remain in the possession of one of the parties until the decision of a competent Court, should have proceeded to consider the question which party was in possession of the constituent portions of the land, piece by piece.—21 W. R., Cr., 55.

51. An order under s. 534 Act X of 1872 must be founded on a finding that the person in whose favor it was made was dispossessed of specific immoveable property by the use of criminal force, and must in terms restore such person to the property from which he had been dispossessed.—23 W. R., Cr., 54.

52. The High Court has no authority to require a Magistrate to proceed under Chap. XL Act X of 1872 to hold an enquiry, which is a matter entirely within the discretion of the Magistrate.—23 W. R., Cr., 58.

53. In a case under s. 530 Act X of 1872, the High Court set aside the proceedings of a Deputy Magistrate who, on succeeding his predecessor who had gone into the case, instead of taking the evidence *de novo*, decided the question of possession on the evidence which had been taken by his predecessor.—23 W. R., Cr., 62.

54. Where a Magistrate came to a decision under s. 530 Act X of 1872 that a certain party was in possession and passed an order maintaining him in possession,—*Held* that, although no particular proceeding was recorded under s. 530, yet the preliminaries therein prescribed had been substantially complied with.—24 W. R., Cr., 16. *But see* 25 W. R. 74.

55. Where a — exists which is likely to lead to a breach of the peace, s. 530, and not s. 491, Act X of 1872 applies.—24 W. R., Cr., 67.

56. The act of the Civil Court peon in delivering over possession of the disputed land to the auction-purchaser as part of the tenure sold in execution, does not take away the power of a Magistrate to enquire into the question of possession between the parties under s. 530 Act X of 1872.—25 W. R., Cr., 18.

57. Where several parties dispute about the proprietary right in a burial-ground which is in the possession of a manager on behalf of them all jointly, such manager cannot constitute himself a judge of their respective rights; and the case is one which cannot be dealt with under s. 530 or s. 532 Act X of 1872, but only by a Civil Court.—25 W. R., Cr., 24.

58. Where a Magistrate, being in doubt as to which of two persons was rightful owner of some disputed property, attached it in order to prevent a breach of the peace, and released it on their coming to an agreement; but subsequently re-attached it on the appearance of a third claimant, from whose attempt to obtain possession a breach of the peace was apprehended,—*Held* that the Magistrate could only order a fresh attachment after taking the preliminary steps under s. 530, if, on completion of enquiry, he found himself in the position described in s. 531; and that if there was any new dispute, he ought to have proceeded *de novo;* but that the best course to pursue would be to exert his powers under Chap. XXXVII.—25 W. R., Cr., 68.

See Affray 1.
Appeal 74.
Attached Property.
Cattle Trespass 5.
Certificate 48.
Construction 67.
Dispossession.
Ejectment.
Evidence 79.
Intervenor 18.
Jurisdiction 158, 186, 268, 401, 428, 429.
Khas Mehals.
Limitation 96.
,, (Act XIV of 1859) 16, 192.
Mischief 3.
Possession.
Possessory Award.
Practice (Appeal) 20.
,, (Possession).
Recognizance 19.
Right of Private Defence 3.
Trespasser 2.

Landlord and Tenant.

1. Jurisdiction of Revenue Court where relation of — is alleged and denied. — W. R. F. B. 29 (1 Hay 238, Marshall 99).

2. In India the doctrine "once a tenant always a tenant" holds good, and land which is admitted to have been within the estate of a proprietor, can, by no successful fraud or by the omission of a legal obligation on the part of a tenant (*e.g.* non-payment of rent), convert a tenant's right into a right of ownership.—2 Hay 4.

3. A tenant was authorized by his landlord to pay a certain portion of his rent to T. a creditor of the landlord. T afterwards obtained a decree against the tenant for the amount of rent he was required by his landlord to pay him. The landlord brought a suit for the entire amount of the arrears. *Held* that he was entitled to recover only the surplus beyond the amount for which T had obtained a decree, notwithstanding such decree was unsatisfied.—2 Hay 447 (Marshall 363).

4. Contemporaneously with the execution of a pottah, it was verbally agreed that the tenant should supply the zemindar with a certain quantity of rice, and that a deduction should be made from the rent reserved in respect thereof. The zemindar took proceedings against the tenant, under Reg. VIII of 1819, for the recovery of the entire amount of rent, notwithstanding the tenant had supplied the rice and was entitled to the deduction. The tenant, without contesting his liability or demanding an investigation as to the amount due, paid the entire amount. *Held* that this was not "an exaction from the ryot of a sum in excess of the rent specified in the pottah" within the meaning of s. 10 Act X of 1859, and that a suit was not

LANDLORD AND TENANT (*continued*).

maintainable in respect of it under Act X.—2 Hay 519 (Marshall 420).

5. The dispossession of a tenant by a third party will not relieve the former from liability to pay rent to the landlord; but if the landlord dispossesses the tenant, he cannot claim rent for the period during which he kept the tenant out of possession.—2 Hay 524, 591.

6. If a tenant encroaches, the presumption is that he does so for the benefit of the landlord.—2 Hay 560.

7. A landlord is entitled to a decree for arrears of rent notwithstanding that the tenant has sued for abatement.—1 R. J. P. J. 104 (Sev. 76*a*).

8. A by permitting B to build a *haut* on his land, impliedly admits him as a tenant, and can claim rent from him, but not a share of the profits.—W. R. Sp. 165.

9. A tenant who holds over after the expiration of a lease, does so on the same rent and terms as before, until a fresh settlement is come to.—W. R. Sp. (Act X) 42; (2 R. J. P. J. 204). *See also* 22 W. R. 394, 25 W. R. 234.

10. One who holds and cultivates another's land is that other's tenant, and is bound to pay him a fair rent and give him a kubooleut.—W. R. Sp. (Act X) 82 (2 R. J. P. J. 361).

11. Proof of tender by landlord, and of refusal by tenant, of a pottah, is not necessary or practicable in a suit for determination of rent and a kubooleut thereupon.—*Ib.*

12. A condition in a lease, allowing a tenant to hold on after expiry till a new arrangement is made, does not entitle the tenant to claim a fresh arrangement with the zemindar direct.—1 W. R. 250 (3 R. J. P. J. 323).

13. As a landlord, whose rights have been adjudged to a third party, is bound to pay the mesne profits, he is entitled to rent from his tenants.—1 W. R. 251 (3 R. J. P. J. 324).

14. To justify a holding over after expiry of lease, a direct consent on the part of the landlord is requisite; otherwise the tenant will be regarded as a trespasser and be liable to damages.—4 W. R. 24. *See* 15 W. R. 133.

15. A tenant holding over for a number of years on sufferance without pottah is a yearly tenant who may recover possession if ousted without notice; but if he held under a pottah which has expired, he may be turned out early the following year as a trespasser.—5 W. R. (Act X) 17.

16. The mere denial by the tenant of the landlord's right does not put an end to the relation of — so as to enable the tenant to treat his possession as adverse to his landlord.—6 W. R. 215.

Nor is it settled law that such denial works a forfeiture of the tenancy.—22 W. R. 418, 25 W. R. 117.

17. A landowner who, after the expiration of a lease, continues to receive rent for a fresh period, must be considered to have acquiesced in the tenant continuing to hold upon the terms of the original lease, *i.e.* as tenant from year to year, and cannot turn out the tenant, or treat him as a trespasser, without giving him a reasonable notice to quit.—7 W. R. 152, 16 W. R. 185, 23 W. R. 271.

18. A landlord by taking rent from a party and suing him for the arrears of his predecessor's rent, acknowledges him as a tenant and cannot eject him or enhance his rent, except according to law.—7 W. R. 250.

19. So long as the relation of — exists, the mere omission by the tenant to pay his rent does not constitute an adverse possession so as to make limitation applicable.—7 W. R. 400.

20. A zemindar by taking the deposited rent of the plaintiff's purchased lands, admits his *status* as purchaser from the former ryots; and as this payment was made long before the zemindar sued those ryots for enhanced rent, the decree obtained by him in that suit must have been collusive.—7 W. R. 460.

21. A landlord's cause of action to recover possession from a tenant or any one claiming under the tenant accrues from the time when he determines the tenancy; and there can be no limitation or adverse possession as against the landlord so long as the tenancy continues.—8 W. R. 55. *See also* 25 W. R. 319.

22. A tenant holding land for a term and under-letting it, parts with his own interest to the extent of the interest created by the under-lease, and cannot determine the interest of his under-tenant by surrendering his own term.—10 W. R. 384.

23. The payment of rent by defendant to a third party, under a deed of assignment from plaintiff's father, does not prove that the relation of — did not exist between plaintiff and defendant.—10 W. R. 495.

24. When plaintiff and defendant both hold pottahs from the same zemindar, but plaintiff's pottah which is of later date is for a *modafut* which includes the land for which defendant holds a lease, plaintiff's lease does not make him defendant's landlord.—11 W. R. 128.

25. The landlord is liable for tenant's furniture burnt in a house which catches fire for want of a proper vent to the chimney which extends to the roof.—12 W. R. 145.

26. An ex-parte decree for rent is good evidence of the existence of the relationship of —.—12 W. R. 473.

27. A tenant occupying in pursuance of a contract cannot maintain possession free from payment of rent, because the landlord has lost the paper containing the terms of the contract.—12 W. R. 520.

28. A tenant's mere statement of willingness to pay rent is not sufficient to constitute the relation of —.—13 W. R. 94.

29. A kubooleut is a matter of agreement. If a ryot has a right of occupancy and insists on that right, he impliedly undertakes to give a kubooleut at fair and equitable rights if his landlord requires him to do so. But if the right of occupancy is absent, the ryot can only remain on the land by the permission of the landlord, *viz.* on such terms as may be agreed upon between the landlord and himself.—13 W. R. 117.

30. A tenancy which is to continue year-by-year is a continuing tenancy so long as the parties are satisfied: and though terminable at the option of either party at the end of any year, is not *ipso facto* terminated at the end of every year.—13 W. R. 190.

31. In the case of —, the tenant is not liable for damage done to the landlord's premises, unless the premises are used in an unreasonable and improper manner, or for a different purpose from that for which they were let.—14 W. R., O. J., 45.

32. Thus the tenant of an upper floor was held not liable for damage done to his landlord's goods below by reason of the floor falling in though not unreasonably loaded.—*Ib.*

33. Where a landlord assigns his right to another, his lessee cannot put an end to the obligation to pay rent, if, after becoming aware of the arrangement, he made no objection. If the assignee dispossess the lessee, he cannot sue the latter for rent.—14 W. R. 83.

34. As a general rule, when a person takes land from another and pays rent to him, he cannot deny the title of his landlord; but he is not precluded or estopped from proving, when sued for rent, that that title has expired. But he is not warranted in refusing to pay rent simply on the apprehension that he may be called on to pay the rent by a party who is said to have obtained a decree against the landlord. Even if a decree has been passed against the person from whom the landlord derives his title, he is entitled to recover his rent until the decree is put in force.—14 W. R. 85.

35. A tenant holding over for some time without renewal of his lease is entitled, whether he has any right of occupancy or not, to retain possession of his tenure until he either resigns or is ejected in due course of law.—14 W. R. 467.

36. Where the rents of lands admittedly in possession of D are recoverable under an assignment from the registered tenant C, the suit should proceed against both.—15 W. R. 107.

37. A landlord may restrain a tenant from erecting a brick-house on land let for cultivation; but if he allows it, he cannot afterwards say that the tenant has done wrong. Should the tenancy determine, the landlord would be the owner of the soil, and the tenant of the house.—15 W. R. 360.

38. A tenant's being allowed to hold over for a year beyond the term of his lease creates no right of occupancy in his favor, and the landlord's cause of action arises when he is refused the right of re-entry.—16 W. R. 146.

39. The permissive occupancy of land gives no right of occupancy under s. 6 Act X or right to compensation when landlord determines the tenancy, even if occupant's huts have been standing there many years and he has surrounded it with a *kutcha-pucka* wall.—17 W. R. 383. *See also* 21 W. R. 400.

40. No tenant is entitled, without specific agreement, to

LANDLORD AND TENANT (*continued*).

change the nature of the land, or make permanent alteration in the state of the landlord's property. The making of excavations for making bricks should be the subject of special agreement in the same way as when land is taken for building purposes.—17 W. R. 416. *See* 23 W. R. 298.

41. The erection of a mud-house by one who holds either as a sub-lessee or trespasser, and dwelling there for more than 12 years, affords no presumption of acquiescence on the part of the proprietor.—18 W. R. 19.

42. A tenant's statement that he has a good title as against a person alleging himself to be the assignee of the original landlord does not constitute a forfeiture of the tenure in favor of the landlord or warrant the latter in suing for khas possession.—18 W. R. 465.

43. In a suit for rent where plaintiff sues as adopted son of the deceased landlord, and defendant, being the adopted son of the deceased tenant, denies the relationship of — between them,—*Held* that plaintiff's adoption having been declared by a competent Court, the mere fact of an appeal to the Privy Council did not alter the position of the parties, and that the fact of plaintiff not having received rent for many years and having tried to eject defendant did not alter the relationship of —.—19 W. R. 18.

44. A landlord suing for ejectment, who admits that the defendant has been his tenant, cannot succeed upon any other ground than that the period of tenancy has elapsed or in some way terminated.—19 W. R. 215. *See also* 25 W. R. 319.

45. There need not be an express agreement between the parties to pay rent; and where a party occupies land within a zemindaree as a tenant-at-will on terms of paying rent, a purchaser of the zemindaree would have a right after his purchase to treat him as a tenant.—20 W. R. 99.

46. Where A holds under B's tenant, his possession is not adverse to B, and if he continues to hold, the presumption is that he holds as before. If setting up a title to any portion of the property, he obtains a decree against B's alleged tenant, this will give B a cause of action against A. —20 W. R. 398.

47. A lessee is bound to pay to the lessor the rents reserved in the lease as long as the relationship of — subsists. A tenant denying the landlord's claim must show that the relationship has terminated.—21 W. R. 5.

48. A party in possession and receiving from the occupant ryot the entire rent payable for the land, has a right to claim rent from the ryot as his personal tenant apart from any title to the property.—21 W. R. 153.

49. Where a tenant has not any *goozashta* right, or any right of occupancy or fixed rent, his tenancy may be determined at any time by reasonable notice. The landlord's right to turn him out does not depend on whether the tenant has executed a kubooleut for a limited term to the landlord's predecessor.—21 W. R. 268.

50. Where a tenant continues to hold land after his term, his pottah will be evidence of the rent at which he is holding over, in the absence of evidence of subsequent alteration of the rent.—22 W. R. 31.

51. Parties in possession make themselves tenants by use and occupation, and may be sued for rent even though not registered by the zemindar.—22 W. R. 334.

52. Where tenants hold land by different arrangements, the zemindar has no right, without their consent, to break up existing holdings and re-distribute lands so as to alter the extent and nature of the holdings.—22 W. R. 336.

53. A decree which directs that a kubooleut shall be given by defendant at a certain rent, amounts to an adjudication that the relation of — subsists between the parties.— 22 W. R. 389.

54. The word *prajah* does not define the *status* of a tenant. —22 W. R. 398.

55. Where certain premises were let under an agreement in which the tenant covenanted as follows: "I will make the necessary repairs to the buildings at my own cost; if by reason of my not repairing any injury occur to a building or it become broken, I will restore it,"—*Held* that the tenant was not liable to restore the buildings if, whilst in good repair, they were blown down or injured by a cyclone; but only when the buildings became necessary to restore in consequence of his not repairing; and that any loss occasioned by the natural operation of time ought to fall upon the landlord and not upon the tenant.—23 W. R. 34.

56. In the absence of any express agreement to the contrary, a landlord is under the implied obligation to indemnify his tenant against ouster or disturbance of possession by his own act, or by the acts of those who claim under him or have a right paramount to his, but not against the wrongful acts of third parties.—23 W. R. 121.

57. A landlord is entitled to eject his tenant after notice, unless debarred by certain rights of the tenant. He is not required to prove the absence of the circumstances which entitle that tenant to retain possession.—23 W. R. 288.

58. Where a putneedar and his tenant were defendants in a suit brought by the zemindar for setting aside the *putnee*, and both were by the decree made liable for the mesne profits which the tenant eventually paid out of his own pocket,—*Held* that the effect was to cancel all relation of — between the putneedar and his tenant, and to give the tenant a right to receive back what he had paid.— 23 W. R. 303.

59. A purchaser of land is bound by a contract between his vendor and a tenant, which is secured by the rent of the land remaining in the hands of such tenant; the contract being in the nature of an assignment of rent of the property sold.—24 W. R. 68.

See Abatement 15, 23, 26.
Appeal 183.
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Landmarks.

In a dispute as to what estate certain lands belong, whose — have disappeared in consequence of temporary submersion, the position of the old — must be clearly laid down.—W. R. Sp. 218.

See Churs 70.
Limitation 141.

Land taken for Public Purposes.

1. Government held liable for rents of land not legally and formally taken possession of by its officers for embankments.—W. R. F. B. 18 (1 Hay 122, Marshall 56).

2. A farmer being, under s. 39 Act VI of 1857, "a person interested in land," is entitled to compensation for — (for a railway as in this case).—1 Hay 157 (Marshall 91).

3. Where land is taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zemindar and the holder of several subordinate tenures, is by ascertaining the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase-money of each interest.—2 Hay 565 (Marshall 490). *See also* 18 W. R. 91.

4. In a suit to recover the proportion of money paid into Court as compensation for — (for a railway as in this case), to which the plaintiff, a dur-putneedar, may be entitled, and in which suit the zemindar and putneedar are defendants, the plaintiff cannot claim an abatement of rent under s. 18 Act X of 1859, since such a claim is cognizable only in a suit instituted under that Act.—*Ib.*

5. In a case of —, where, in consequence of counter-claims, the amount of compensation is invested by the Collector in Government securities, the successful claimant cannot demand from the other claimant interest over and above the principal and accruing interest in the hands of the Collector, if there was a doubt of the former's title justifying the latter's suit.—W. R. Sp. 329 (L. R. 104).

6. A suit for rent does not lie against Government for —.—3 W. R. 131.

7. A suit by a putneedar for his share of compensation paid by Government to the zemindar for —, is only cognizable in the Civil Court.—4 W. R. 39.

8. The putneedar is entitled to such compensation, although there was no agreement to that effect.—*Ib.*

9. A suit for compensation for — under Act VI of 1857 will not lie against a lessor by a lessee who did not appear and claim compensation before the arbitrators.—8 W. R. 327.

10. A zemindar receiving rents in full is not entitled to share in compensation given to a putneedar for loss of —.—10 W. R. 12.

11. In a case of —, the party in possession at the time is *primâ facie* entitled to the money paid for it until some one establishes a prior claim.—10 W. R. 48.

12. The principle of compensation for — applicable to the case of several putnees or intermediate tenures.—10 W. R. 391.

Or to the case of a single putnee.—20 W. R. 370.

13. The party *primâ facie* entitled to compensation for — is the proprietor. Any party claiming the same as against the proprietor by virtue of a right created by the latter, is bound to prove the right he pleads.—12 W. R. 270.

14. Where, in a suit for the compensation deposited in the Collectorate on account of — under Act VI of 1857, plaintiff's calculation secures to the zemindar a more favorable result than the latter contends for, the suit may be decreed without determining the principle on which compensation should be allowed.—12 W. R. 340.

15. An appeal does lie under s. 30 Act X of 1870 whenever there is a difference of opinion between the Judge and the Assessors whether the Assessors agree with each other or not.—17 W. R. 221.

16. In such cases under that Act, the evidence should be recorded by the Judge according to s. 172 Act VIII.—*Ib.*

17. The zemindar is entitled to a share of compensation for ghatwalee — by a railway company.—18 W. R. 91.

18. One of several claimants to money deposited with the Collector for — sued his opponents and the Collector. On a written statement from the Collector, a decree was made against all the defendants, and the Collector was adjudged entitled to his costs. Upon application for execution, a correspondence passed between the Subordinate Judge and the Collector, resulting in an order by the former directing the Collector to pay plaintiff only so much as remained after payment of other claims. *Held* that no appeal lay to the Judge from the order of the Subordinate Judge, and that the proper course would have been a suit, not against the Collector, but against those who opposed plaintiff's claim.—18 W. R. 108.

19. Where a decree provides for the execution of a conveyance of land, but not for the payment of money, and a portion of the land is taken away by Government for railway purposes subsequently to decree, the decree-holder must bring a separate suit to recover compensation-money.—18 W. R. 189.

20. Where the compensation-money for putnee — is in deposit with the Collector without specification of shares, the putneedar's cause of action against the zemindar arises when the former seeks to obtain his share and is prevented by the zemindar not joining him.—20 W. R. 370.

21. In proceedings under Act X of 1870, the order of distribution contemplated by s. 39 is not a final order on adjudication of the rights of the parties to the property for which compensation has been assessed and awarded; but the question determined may, under the proviso in s. 40, be re-heard in a regular suit.—22 W. R. 38.

22. An appeal was held to lie to the High Court from an award of the Judge appointed under Act X of 1870 for the town of Calcutta where the amount of compensation awarded was below 5000Rs., s. 35 of that Act as well as s. 2 Act I of 1868 notwithstanding.—22 W. R. 136. *See also* 23 W. R. 239.

23. In determining the compensation to be allowed for —, how the Court distinguished between occupied and unoccupied land.—22 W. R. 234.

24. Where a Judge appointed under Act X of 1870 and one of the Assessors differed as to the amount of compensation to be awarded, but the difference was so slight that the Judge waived his doubts and did not express a dissentient opinion,—*Held* that there was not such a difference of opinion as entitled the party claiming compensation to an appeal.—22 W. R. 305.

25. Where compensation was offered for certain — on the banks of the Hooghly, so much for the portion above high-water mark, and so much for the portion below, the Judge appointed under Act X of 1870 and the Assessors

LAND TAKEN FOR PUBLIC PURPOSES (*continued*).

ought to have determined what was a proper compensation for each description of land instead of applying the whole compensation to the land above high-water mark and allowing none for the other.—23 W. R. 73.

The duty of the Judge under the Act being to determine the money value of ascertained interests, and not to try questions of title.—25 W. R. 320.

26. In a suit for compensation for ghatwalee — (for the construction of a railway),—*Held* that the zemindars were not entitled to compensation as they had sustained no loss but would continue to receive from Government, under s. 4 Reg. XXIX of 1814, the same profits as they had been hitherto enjoying; that the representatives of a deceased under-tenant were not entitled to compensation as the deceased had not during his lifetime any valid title to any portion of the lands taken but was in possession by the mere sufferance of the ghatwal; and that the ghatwal, not being absolute owner, was entitled only to the interest of the compensation-money which he was bound to keep intact as a part of the ghatwalee property.—23 W. R. 376.

27. An award under the Land Acquisition Act cannot be affected by a suit to recover from the party to whom compensation has been awarded and to have plaintiff's title declared to the land claimed.—25 W. R. 103.

See Abatement 18, 21.
Costs 3, 50.
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Language.

See Evidence (Documentary) 66.
,, (Oral) 51.
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Law.

1. The — as it exists when a suit is commenced, must decide the rights of the parties in the suit, unless the Legislature has expressed a clear intention to vary the relative rights of the parties to each other.—1 Hay 369.

Or to give a legislative enactment retrospective effect.—16 W. R. 226.

2. Ignorance of law.—*See* Maxims 1.

See Construction 7.
Hindoo Law.
,, ,, (Adoption).
,, ,, (Alienation).
,, ,, (Coparcenary).
,, ,, (Inheritance and Succession).
,, ,, (Migration).
,, ,, (Religious Ceremonies).
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Lex Loci.
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Mahomedan Law.

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See Special Appeal 130.

Law Officers.

References to — on questions of right and title, how to be framed.—(P. C.) 2 W. R., P. C., 4 (P. C. R. 452).

Law of Merchants.

See Lex Mercatoria.

Lease.

1. Effect of unlicensed transfer of —.—W. R. F. B. 8 (1 Hay 62).

2. By putneedars afterwards defaulting.—W. R. F. B. 10, (1 Hay 75).

3. Payments of rent made to superior proprietor without notice of intermediate —.—W. R. F. B. 30.

4. By auction-purchasers after decree.—W. R. F. B. 40.

5. Where a — provides that, in case of a default in the payment of rent, the lessor should have the power of re-entry, without expressly mentioning the mode of effecting it, the lessor must proceed according to s. 22 Act X of 1859.—1 Hay 573.

6. If no term is mentioned in a —, the — must not be considered one in perpetuity, but either an annual tenancy or one for the life of the tenant according to the terms of the —.—2 Hay 4.

7. A — purporting to be for a term of 7 years contained a proviso that, if at any time the lessee should make default in payment of rent, the lessor should be at liberty to let the lands to another lessee,—*Held* that the introduction of this proviso did not make the — operate as a grant in perpetuity so long as the rent was paid, but merely had the effect of enabling the lessor to determine the — within the term, in case of default by the tenant in paying the rent.—2 Hay 14 (Marshall 250).

8. A — contained the following words, "You shall continue to pay the sum of 5Rs. sicca, fixed on the whole as ticca jumma of the said monzah every year; and having cleared the village of jungle, and having brought the lands under cultivation, yourself and through others, as usual, enjoy and occupy the same with your sons and grandsons in succession," etc.,—*Held* that the — conveyed an absolute interest; that the grantee and his heirs were entitled to transfer it; and that a transferee, not an auction-purchaser, was not liable to enhancement of rent.—2 Hay 436 (Marshall 330).

9. A — for a term of years contained a proviso that, if in any year the rent should be three kists in arrears, the lessor might appoint a sezawal, and the lessee would pay his salary; and if, notwithstanding the appointment of such sezawal, the arrears of rent were not paid by the end of the year, the lessor should be at liberty to rescind the —,— *Held* that it was a condition precedent to the right of the lessor to rescind the —, that he should have appointed a sezawal.—Marshall 474.

10. Where defendant took under a — from the lessee pending a suit brought against him to determine the —, and was liable under s. 223 Act VIII of 1859 to be turned out under the decree which gave plaintiff the possession of the land,—*Held* that plaintiff never became a tenant of defendant and could not sue under Act X of 1859 and urge before the Revenue Court that the Civil Court was wrong in turning plaintiff out of possession in execution of that decree.—1 R. J. P. J. 53.

11. Forfeiture of — under cl. 5 s. 23 Act X of 1859 not to be favored when no damage ensues or where a money compensation is a sufficient remedy. What acts are sufficient to cause forfeiture, and what constitutes a sub-lease.—W. R. Sp. (Act X) 31 (2 R. J. P. J. 155).

12. A covenant in a — for years to grant a new — on the expiration of the existing term, under and subject to all covenants as in the first — contained, is satisfied if such new — contain the like covenants as the former — except the covenant for renewal.—2 Hyde 217.

13. An *amaldostak* given as a preliminary to a formal — is not equivalent to a — and gives no title whatever.—3 R. J. P. J. 327.

14. A landlord may cancel a — on an adjudged arrear before expiration of the term of it.—W. R. Sp. 269.

15. Though the holder of a younger brother's appanage cannot alienate property of which he has only a limited

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tenure for maintenance, yet he can grant a lease at least for the period of his life.—W. R. Sp. 370 (L. R. 143).

16. A mining — is regarded by the Regulations as requiring a long time for profitable working.—*Ib.*

17. There is no restriction upon zemindars in respect of their powers to grant pottahs and leases on any terms they please.—W. R. Sp. (Act X) 130.

18. Where a — is not in writing, but the terms of holding are specified in a notification addressed by the lessor to his servants, such an acknowledgment is, as against the lessor, conclusive evidence of the terms of the agreement.—(P. C.) 6 W. R., P. C., 48 (P. C. R. 152). *See also* 37 *post*.

19. Where a — for a fixed term of 7 years contains no words to import a continuance of the interest after the death of the grantee, nor any expressions which point to any earlier determination of the interest, the *primâ facie* meaning is a continuance for seven years, and that the — did not terminate with the death of the original lessee, but survived during the remainder of the term to his heirs and representatives.—*Ib.*

20. Where an agreement to grant a — was incomplete and conditional upon an advance within eight days to meet pressing demands, a delay of 19 days was held to be unreasonable and likely to defeat the object of the —.—(P. C.) 3 W. R., P. C., 33 (P. C. R. 395).

21. A perpetual — of a distinct portion of a zemindaree is not a transfer within the meaning of s. 8 Reg. XXV of 1802 (Madras Code).—(P. C.) 4 W. R., P. C., 73 (P. C. R. 440).

22. A 20 years' — is an alienation and therefore inconsistent with attachment under Reg. II of 1806.—1 W. R. 63.

23. Land leased by a dur-putneedar to a tenant, who sub-lets it to a third party, who again under-lets it to a fourth, cannot be re-entered by the dur-putneedar to the prejudice of the second and third tenants on desertion by the fourth.—1 W. R. 174.

24. The guardian of a hereditary proprietor cannot grant a — for a longer period than her own incumbency.—1 W. R. 211.

25. A — granted by an ijaradar is not good beyond the term of the ijara.—2 W. R. 155.

26. It is not within the ordinary authority of a naib to grant a —; special authority to do so is necessary.—*Ib.*

27. A lessor's agent for the receipt of rent is not necessarily his agent to receive lessee's notice of option to renew the —; but if he has received such notice, and given it to lessor within time, the notice is sufficient.—2 W. R. 208.

28. Perpetual — for building. *See* Enhancement 118, 257.

29. The *bonâ fide* act of a guardian for the benefit of a minor's estate, in giving a farm of the estate, cannot be set aside except for strong reasons.—2 W. R. 270.

30. Building leases. *See* Ejectment 91, 103; Enhancement 118, 122, 170, 257; Jurisdiction 289; Transferable Tenure 5, 8.

31. Where a — provides for rent-free possession of jungle lands for 12 years, such possession does not necessarily date from the year of the —.— 2 W. R. (Act X) 78.

Quære. Whether in a suit for rent the lessee can plead that he has not had such possession.—5 W. R. (Act X) 74.

32. In every agreement to — land, there is an implied contract to give peaceable possession.—2 W. R. (Act X) 103, 11 W. R. 278, 12 W. R. 149, 15 W. R. 230.

Mode of assessing damages for breach of contract in such cases.—22 W. R. 260.

33. A lessee can take no greater rights than his lessor, and is bound by the decree in a suit against his lessor to the same extent as the lessor.—3 W. R. 41.

34. A lessor cannot, after the expiration of the lessee's —, appeal from the dismissal of the lessee's suit concerning a boundary dispute.—3 W. R. 175.

35. The recital of necessity in a — is not *per se* legal proof of the existence of the necessity which under Hindoo law may justify an alienation by a mother or grandmother.—5 W. R. 244.

36. The cancelment (so far as a minor co-sharer's share was concerned) of a mourosee — granted by the lessors in their own behalf and as guardians of the minor, will not entitle the lessees to recover the minor's share of the consideration paid for the — without proof of fraud. The record of the suit instituted by the minor, when he came of age, for the cancelment of the — is not admissible to prove the allegation of fraud.—5 W. R., S. C. C., 23.

37. Ryots do not lose their right of occupancy or their right to hold at fixed rates, merely because they cannot produce a written —.—6 W. R. 195.

38. The right to cancel a — for non-payment of rent, given by s. 22 Act X, need not be provided for in the —.—6 W. R. (Act X) 47.

39. A pottah granted by a lessee from Government, whose — fell in by his own default, cannot enure beyond the temporary interest of the grantor.—6 W. R. (Act X) 88.

40. A lessor's agent exceeds his power in granting a — with a stipulation that the lessee was to receive from the lessor the expenses he might incur in any litigation with third parties respecting the land leased.—7 W. R. 419.

41. A person who has authority to conduct the negotiation respecting a —, is such an agent that a notice to him may be notice to his principal.—7 W. R. 463.

42. Lessees cannot maintain possession under a — granted under a pretended title which has been set aside by a decree of Court.—8 W. R. 360.

43. Construction of the terms "*abadkaree talookdaree*" in a —.—8 W. R. 391.

44. The resignation of some of the joint lessees, where there is an entirety and equality of interest among the tenants, does not void the —.—9 W. R. 147.

45. Where a pottah provided that the grantor was not to alienate or — the property to any other party without giving the lessees the refusal, the restriction was held binding.—*Ib.*

46. To make a guardian's relinquishment of a *mourosee* — binding on the minor, it must be shown that it was made for the minor's benefit.—10 W. R. 59.

47. Where a father, paying the consideration money out of his own funds, obtains a — in the name of his wife and son, and, on the death of the former, in the joint names of the same son and his daughter by the deceased,—*Held* that the property was given to his wife and children for their maintenance.—10 W. R. 277.

48. A sub-lessee from a party who is lessee under the proprietor has no right of action against the proprietor with whom he has no contract and who is not bound to look beyond his own lessee.—10 W. R. 367. *See also* 12 W. R. 263.

49. Where an application for a — for farming jungle lands was in its nature general, but the answer was specific and clear, and granted the — on certain conditions, the answer determined the contract and was the only contract between the parties.—(P. C.) 10 W. R., P. C., 13.

50. A lessee who sues alleging that there has been an interruption to his — to cut or sell the trees on the land included thereon, must base his right (1) upon its being a necessary incident of the — by reason of the objects of the —, or (2) under some positive law, or (3) under some custom to be incorporated in the law, or (4) under the express terms of the —.—(P. C.) *Ib.*

Where jungle land was let by Government to a tenant for the express purpose of being brought into cultivation, and the — contained no reservation of the rights of Government in respect of the cutting of timber trees, the Court held that the parties contemplated that the cutting of such trees by the tenant would be necessary for carrying out the purposes of the —.—22 W. R. 523.

51. The proprietor of resumed lakheraj land, who leases it while the settlement proceedings are under reference for confirmation, cannot afterwards plead that he had no power to grant a permanent — because his settlement then was not permanent.—11 W. R. 11.

52. A lessee, whose lessors have never been in possession of the lands comprised in the —, may sue to establish the title of his lessors, if he makes them co-defendants along with the parties in possession.—11 W. R. 80, 137. *See* 25 W. R. 223.

53. Where no money is advanced for a —, and no debt is due from the lessee to the lessor, plaintiff has no lien on an indigo factory in satisfaction of a debt.—11 W. R. 194.

54. A Government ijaradar's covenant with Government not to object to the use of the tanks and roads, etc., within his ijara, does not prevent his making settlements for them; and a — to one party cannot interfere with another's right of user or give him cause to sue for a declaration of title.—11 W. R. 394.

55. Where the appointment of a sezawal to collect the rents is provided for in the lease in the event of the tenant

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failing to pay his rents, such appointment, when made, cannot be regarded as either avoiding the — or evicting the lessee.—11 W. R. 464.

And must be taken to have reference only to the back rents to be collected.—24 W. R. 116.

56. A, taking at a stipulated rent a property leased to B for the remainder of B's —, which immediately after is surrendered to the landlord who gives a fresh — to a third party, is liable for rent for the period the — was to run to the lessor or his representative.—11 W. R. 485.

57. Where a — for 5 years was construed to be not a permanent one, but to give the landlord the right of re-entry. —12 W. R. 538.

58. A lessor by granting a — to another party, and dispossessing the former lessee, makes himself responsible for any loss occasioned thereby.—14 W. R. 43.

59. The proper construction of s. 2 Reg. XIV of 1812 is that the — therein referred to is to be null and void as against the Government but not against the lessor.— 14 W. R. 107.

60. Where the proprietors of an estate, on being informed by their agent of a proposition to obtain a — of the property, refused their consent, and the agent notwithstanding gave the applicant a written authority to enter upon the property as lessee and gave no notice at the time to the proprietors but subsequently informed them of it,—*Held* that the proprietors were under no obligation to take any steps to disavow the act of their agent.—14 W. R. 378.

61. A lessee, when he finds another party in possession with an adverse title and cannot get possession, may throw up his —, but he cannot litigate the title of his lessor with the party in possession, and failing in that litigation, make his lessor pay his expenses.—14 W. R. 382.

62. A lessor should give distinct notice to the tenant of his intention to dispute the validity of the —.—15 W. R. 438.

63. Every breach of an agreement for a — does not entail forfeiture of the —; but, where forfeiture is provided as the penalty for breach of a particular clause, it may be enforced for such breach.—16 W. R. 103.

64. A decree for cancelment of a — is virtually one for possession in supersession of that —, and may be so executed by the Revenue Court by which it was passed.—*Ib.*

65. A — for a term continues for the specified term to the heirs of the lessee dying within the term.—16 W. R. 147.

66. Remedies which a zemindar has against an ijaradar for breach of a covenant not to excavate a tank on pain of eviction and liability to pay the cost of filling up the tank. —17 W. R. 29.

67. In a suit to set aside a — as granted without authority by a naib, the owner was presumed to know what was being done on her behalf by the naib, and the mere circumstance of the rents being low was held not to give rise to the presumption of fraudulent conduct or concealment by the naib. Even if the — were liable to be set aside, the ratification by a person having authority from the owner, would render it valid.—17 W. R. 301, (*affirmed by P. C.*) 21 W. R. 425.

68. There is nothing incompatible in the two remedies of damages and forfeiture for breach of the conditions of a —. —18 W. R. 218.

69. An obligation (as by a lessee) to do successive acts is broken if one of them is omitted when the time for its performance comes. The lessor need not wait until the term expires; nor is the lessee liable to successive suits, and then to a general penalty; nor is it usual to bring two suits, one to enquire into the existence of the breach, and the other to enforce the penalty.—*Ib.*

70. Where a — contained two provisions, one for payment of rent, and the other for forfeiture and re-entry on default of payment; and by a later *solehnamah* the rent was put an end to and the lessor received back a portion of his land, and by a subsequent *solehnamah* the lessees agreed to pay a new rent and no provision was made for re-entry or forfeiture; the clause as to forfeiture and re-entry in respect of the original rent was held not to apply to the rent under the last *solehnamah*.—18 W. R. 244.

71. Where a lessee had no explicit notice of the purchase of a share of the talook let to her, and no apportionment had been made with her consent of the rent payable on the share so sold, she was held justified in continuing to pay the rental as a whole to the original lessor and not liable to the purchasers for the rents already paid by her to the original lessor.—18 W. R. 508.

72. A building, the construction of which was begun and carried on after notice to quit, was held not to fall within the meaning of a covenant in the — by which the lessee was not to be ejected by the lessor except upon payment of the value of property put by the lessee upon the land.— 20 W. R. 228.

73. The fact that, at the foot of a pottah, the right of each lessee was defined, was held not to bind the lessor to recognize each part as an independent and separate tenure, and the subsequent separate payments of rent by the tenants was held not to vary the nature of the tenure.—21 W. R. 256.

74. Unless lessees hold over after the expiration of their — or hold under a yearly tenancy after notice to quit, the lessor has no cause of action against them to recover possession.—22 W. R. 44.

75. An agreement to let premises may be made by an agent; there is no law that it shall be signed by the principal.—(O. J.) 22 W. R. 68.

76. If a person having only a limited interest in land chooses to spend money upon it (*e.g.* in making a tank), he must take the consequences of not being able to get a renewal of the —, and run the risk of losing the benefit of the money he has so expended.—22 W. R. 274.

77. A condition of forfeiture should not be extended beyond the words in which it is expressed, unless it is impossible, without extending it, to give a reasonable construction to the instrument in which it appears.—23 W. R. 10.

78. It is quite competent to a lessor, when granting a — of his land, to stipulate that no ferry shall be established thereupon to the prejudice of his own ferry (existent or possible), and it is quite competent to a lessee to agree to such a stipulation.—23 W. R. 237.

79. A guardian not appointed under Act XL of 1858 has not larger powers than if appointed under that Act, and cannot grant a — for more than 5 years as provided by s. 18.—24 W. R. 49.

80. Where a lessee in one case, after resuming certain rent-free lands on behalf of his landlord, retained them in his own possession, and in another case retained portions of land which he had obtained by way of —,—*Held* that, though the lessor's title to recover was the same, the causes of action were entirely distinct.—24 W. R. 212.

81. A — granted by a manager appointed by the Court, may extend over several years, and if within his powers, stands good against a subsequent pottah granted by the maliks while the — was subsisting.—24 W. R. 253.

82. A lessee has no right to make any contract detrimental to his lessor's interests, which is to take effect after the determination of the —.—25 W. R. 20.

83. No receipt of rent can make a — valid and binding as a perpetual *mourosee* — if it was not originally so, unless the receipts were signed by the lessor acknowledging that the lessee held a mourosee.—25 W. R. 222.

84. The clause in a — regarding forfeiture of the tenure in the event of the tenant neglecting to cultivate the land, is not *ad terrorem* but may be enforced on proof of neglect.—25 W. R. 227.

85. Where a tenant was evicted from a portion of lands leased to him by a title paramount to his landlord's (*i.e.* the judgment of a Court of competent jurisdiction),—*Held* that he had a right, if he so pleased, to resign his —, and that the subsequent reversal of that judgment in appeal made no difference.—25 W. R. 492.

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Legacy.

1. A bequest by a Roman Catholic of Portuguese descent, born and domiciled in Calcutta, for the performance of masses, is not a gift to superstitious uses.—2 Hyde 65.

2. A seizure and sale by the Sheriff of the amount of a —, under a writ against the executor, was declared invalid in the absence of proof of payment extinguishing the legatee's interest.—(P. C.) 5 W. R., P. C., 126 (P. C. R. 90).

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Legitimacy.

1. The Hindoo law makes no distinction between legitimate children born of mothers of the same caste.—W. R. Sp. 20.

2. According to the Mahomedan law, a child born in wedlock is deemed to be the child of the mother's husband.—(P. C.) 6 W. R., P. C., 46 (P. C. R. 150).

3. According to the Mahomedan law, the — or legitimation of a child of Mahomedan parents may be presumed from circumstances without proof either of a marriage between the parents or of any formal act of legitimation.—(P. C.) 3 W. R., P. C., 37 (P. C. R. 400). *See also* 2 W. R. 52, 5 W. R. 4, 15 W. R. 403, (P. C.) 18 W. R. 523, 25 W. R. 444.

4. Under the Mahomedan law the — of a son was held not established where there was no acknowledgment of the son by the alleged father and the other evidence was doubtful.—1 W. R. 303.

5. According to Mahomedan law, the acknowledgment of a father renders a son or daughter a legitimate child, unless it is impossible for the son or daughter to be so.—5 W. R. 132. *See* 10 W. R. 469, 11 W. R. 426, 12 W. R. 497, 15 W. R. 403, 20 W. R. 164.

The acknowledgment by the father throws on the party denying or disputing it the *onus* of proving the impossibility.—18 W. R. 250.

6. The acknowledgment of such paternity renders the son or daughter legitimate, whether the mother was or was not lawfully married to the father.—10 W. R. 45.

7. Notwithstanding Mahomedan law, a Court of Justice cannot pronounce a child to be the legitimate offspring of a particular individual, where such a conclusion would be contrary to the course of nature and impossible.—16 W. R. 261.

8. The legal presumption in favor of a child born in his father's house of a mother lodged and apparently treated as a wife, who was treated as a legitimate child by his father and whose — was disputed after his father's death, is a safe and proper one to be made, and the opposite case ought to be strictly proved.—(P. C.) 17 W. R. 1.

9. *Quære.* Whether a son of a Scotchman retaining his domicile though resident in India, can, if born out of wedlock, become legitimate *per subsequens matrimonium.*—(P. C.) 17 W. R. 35.

10. The acknowledgment of paternity legitimating children under the Mahomedan law should be distinct with respect to each child; and those of the children who have reached years of discretion should come forward and acknowledge their father.—20 W. R. 352.

See Certificate 16.
Evidence (Estoppel) 29.
Hindoo Law (Adoption) 61.

Legitimacy (*continued*).

See Illegitimate Child.
Judgment 13.
Mahomedan Law 4.
Marriage 2, 7, 8, 9, 10, 12, 18, 25.
Onus Probandi 63, 76.
Practice (Execution of Decree) 210.
Ramnuggur.

Lender.

See Loan.

Leprosy.

See Gift 39.
Hindoo Law (Adoption) 13.
,, ,, (Inheritance and Succession) 53, 79.
Onus Probandi 252.

Letters of Administration.

See Administration 2.
Court Fees 4, 13, 14, 23, 25.
Res Judicata 86.
Rules of Practice 35.
Will 21, 22.

Letters Patent.

Amended — for the High Court of Bengal dated 28th Dec., 1865, and Despatch from Secretary of State thereon. —5 W. R.

See Charter.

Lex Loci.

See Domicile.
Family Custom 6.
Legitimacy 9.
Succession 1.
Will 31.

Lex Mercatoria.

See Banker 1.
Bill of Exchange 1, 8.
Mercantile Usage.

Lex Rei Sitœ.

See Sheriff 1.

Libel.

1. A suit for — (contained in an answer in a suit) in describing the plaintiff, who was a Jounpore bunnya, a Telee, whereby the plaintiff had lost his caste, etc., was held to be not maintainable, as it did not appear that the plaintiff had lost his caste or otherwise been damnified, or that the defendant had knowingly misdescribed the plaintiff.—1 Hay 539 (Marshall 224).

2. A letter was written by order of the manager of a firm reflecting upon the character of a professional man, and signed by him, and handed over to a clerk to copy in the ordinary way in the office copy letter book which was open to all the members of the firm. *Held* that such instructions to copy amounted to publication.—2 Hyde 274.

3. When two parties litigate, the credit of either is little affected by the use of one or two expressions, more or less strong, in the petitions filed by them in Court, and does not entitle the party so abused to large damages.—2 W. R. 163. *See* 20 W. R. 60.

4. A party applying to the Judge for the transfer of a case from the Moonsiff on the ground of hostility between them, is not privileged in charging the Moonsiff with other matters.—3 W. R. 198.

5. In a suit to obtain damages for defamation contained in a letter written and sent by defendant to plaintiff, where the only damage alleged was the injury to plaintiff's feelings, it was held (1) that such injury was not in itself a ground for giving damages in a civil action, and (2) that, as the letter was received and read by plaintiff alone, this did not constitute publication.—10 W. R. 184.

6. It is a question for the Court whether the words complained of in an action for — constitute a ground of action, and they must be set out in the plaint. If they are not a —, the plaintiff cannot make them one by alleging intention to injure, etc.; nor can he make them libellous by alleging that they are ironical, if they do not appear to the Court to be so.—(O. J.) 18 W. R. 516.

License.

See Arms 1, 2.
Excise 2, 4, 5.
Fine 11.
License Tax.
Municipal 4, 14, 18, 27.

License Tax.

See Fine 11.

Lien.

1. The defendant S having, as P's representative, recovered P's claim against the defendant R to the last farthing, was held equitably bound to pay over to plaintiff the — which he had upon that money. S, having money subject to the —, has no right to keep it unless he satisfies the —. —Sev. 969.

2. To constitute a — on any property, there must be a clear agreement for the specific appropriation of the property, and the property must be in the possession of the party who claims the —.—2 Hyde 267.

3. The master of a ship has, by s. 58 Act I of 1859, a — upon the ship for the recovery of wages due.—2 Hyde 273.

4. Property purchased in execution of a decree is not subject to any — in favor of a person claiming under a bond and deposit of a *hibbanamah* pledged as a security for a loan.—1 W. R. 143.

5. The fact of A obtaining a declaration of his — upon certain property for an amount of debt, is no bar to B's attaching and selling that property, but the purchaser will be bound by that —.—15 W. R. 246.

6. A right of — and power of sale by virtue of a power of attorney over certain shares pledged as security for the repayment of a loan originally secured by a first promissory note, is not lost by the lender taking subsequently a second promissory note in lieu of the first which is receipted and returned, the second promissory note being given in security for the same loan and no new debt being created. The borrower is not justified in trying to prevent the lender from selling by revoking the power of attorney.—(O J.) 17 W. R. 201.

See Auction-Purchaser (Execution Sale) 35.
Bond 3.
Debtor and Creditor 3.
Dower 15, 16, 17, 19, 20, 22.
Evidence (Estoppel) 125.
House-rent 3.
Indigo 6, 19.
Instalments 17.
Lease 53.
Lis Pendens 5.
Money-Decree 2, 3, 14, 18, 19, 20, 24
Mortgage 25, 70, 87, 257.
Partnership 29.
Registration 5, 85, 125.
Sale 212.
,, Law (Act I of 1845) 1.

Lien (continued).

See Stamp Duty 66.
Timber 1.
Vendor and Purchaser 5, 10, 19.

Light.

See Right to Light and Air.

Limitation.

1. The day on which the cause of action arises should be included in the period of —.—W. R. F. B. 45 (1 Hay 301, Marshall 138).

2. The days on which a former suit respectively commenced and ended should count in deducting from the period of — the time during which the former suit was pending.—*Ib.*

3. Mode of computing — in a pauper suit.—W. R. F. B. 53 (1 Hay 378, Marshall 174).

3*a.* Adverse possession against a Hindoo widow which would bar her right of suit, is also a bar to a suit by the reversioner brought after the death of the widow.—(F. B.) W. R. F. B. 165, 8 W. R. 256, 11 W. R. 9. *See* 50, 164 *post.*

4. Presentation of plaint at Small Cause Court's Clerk's private residence after Court hours, owing to difficulty in procuring stamps earlier, was held good.—S. C. C. 36.

5. Commencement of — in suit for damages for breach of contract to cultivate Indigo.—*Ib.* 45.

6. A suit for resumption of lakheraj land under s. 30 Reg. II of 1819 is barred by — where defendant is shown to have been in possession as lakherajdar before 1790.—1 Hay 26. *See also* 2 Hay 33, Sev. 52*a*, 1 W. R. 218. *See converse* Sev. 561.

7. No possession, however acquired, from a Hindoo widow, can be adverse to a reversioner until his right to possession accrues, viz. not until after her death; nor does the mere setting up a false and fraudulent title by the widow, and the conveyance under it to a third person absolutely, even with the knowledge of the reversioner, alter that rule.—1 Hay 69 (Marshall 33). *See* 164 *post.*

8. A ryot cannot raise a bar of — by adverse possession against his own landlord.—1 Hay 111, 1 W. R. 171 (3 R. J. P. J. 225), 7 W. R. 395, 18 W. R. 413, 25 W. R. 56, 66. *But see* 15 W. R. 232.

9. The defendant appealed on the point of —, and the Judge held that — did not apply and remitted the case to be tried on the merits. The defendant again appealed upon the merits, and these being decided against him, brought a special appeal to the High Court, urging that the suit was barred by —. *Held* that he could not appeal upon this ground after the case had been remitted, but that he ought to have appealed when the point was decided.—1 Hay 134 (Marshall 66). (*Overruled by F. B.*) *see* 122 *post.*

10. The operation of the law of — is not prevented by the circumstance that the plaintiffs have, during the interval, been engaged in suing or litigating against other persons.—1 Hay 303.

11. No wrongful possession under an erroneous order of a Magistrate can constitute such *bonâ fide* possession as will suffice to prevent the law of — from running against a plaintiff.—1 Hay 306. *See* 10 W. R. 49.

The above principle is applicable alike to possessory awards under Act IV of 1840 and s. 15 Act XIV of 1859.—12 W. R. 9, 22 W. R. 259.

12. In a suit to recover money on a kistbundee, where the defendant pleads to certain of the kists as barred by —, the time during which a suit by the defendant for the cancelment of the kistbundee had been pending, should be deducted in calculating the period of —.—1 Hay 444.

13. — was held to apply in a suit to set aside certain deeds affecting the plaintiff's title to the land in dispute, there being nothing to prevent the plaintiff from bringing his suit whilst the property was under attachment.—1 Hay 466.

14. In a partition suit by a widow for the recovery of her husband's share of property held during his lifetime jointly with his brother, although such suit be brought more than 12 years after her husband's death, her claim is not barred by — unless the brother has for a period of 12 years before suit held adversely to her.—1 Hay 478 (Marshall 196).

15. With reference to ss. 6 and 10 Reg. XIX of 1793, a suit brought under s. 30 Reg. II of 1819 to assess lakheraj lands under 100 beegahs in area, is not barred by —, if the lakheraj tenure cannot be shown to have existed prior to the 1st December 1790.—1 Hay 477.

16. In a suit to set aside an adoption of a son, the period of — is not to be reckoned from the date of the adoption if the members of the family who seek to set it aside have by their declarations or conduct subsequently shown that they did not know of the adoption or did not regard it as valid, but from the time when there was distinct knowledge of the adoption.—1 Hay 497 (Marshall 221).

17. — is no bar to a suit for the recovery of a share of joint family property, where the plaintiff and defendants, Hindoos, have been living together in commensality up to within 12 years of bringing the suit.—1 Hay 513 (Marshall 241).

18. In the case of a running account with items on both sides, — will not operate as a bar to items beyond the period of — if there has been an agreement or understanding between the parties that only the balance should be due, and if, within the period of —, the debtor has admitted the state of the balance, including such items, to be correct.—1 Hay 569 (Marshall 219).

19. Where — was applied to a former suit for possession between landlord and tenant, and that decision was not appealed against, the decision was held to be binding on the representatives of the parties to that litigation.—2 Hay 4.

20. Where the plea of — was not taken by the defendants in the Court of first instance, the Lower Appellate Court was held to have been wrong in raising the issue.—2 Hay 49. *See also* 1 W. R., Mis., 1; 4 W. R. (Act X) 47. *But see* 11 W. R. 288.

21. In a suit to recover possession of lands, plaintiff, in order to take his case out of the statute of —, must show that he was in possession within 12 years previously to the filing of the plaint.—2 Hay 127. *See also* 1 W. R. 140, 2 W. R. 89, 6 W. R. 327.

22. — will not run against a wife in the case of a husband being trustee of valuable property for her benefit.—2 Hay 190 (Marshall 286).

23. A suit to recover lands in the Soonderbunds demarcated during the plaintiff's minority was held barred under cl. 2 s. 13 Reg. III of 1828, the plaintiff not having sued within 3 months from the date of his attaining majority.—2 Hay 308. *See also* (P. C.) 11 W. R., P. C., 14.

24. When, after a plaint is returned as not containing the particulars required by s. 26 Act VIII of 1859, it is amended by a supplemental plaint filed on the subsequent day, the date of filing the original plaint should, for the purpose of computing —, be considered the date of institution of the suit, provided there be no laches on the plaintiff's part in amending the plaint.—2 Hay 314 (Marshall 336). *See also* 5 W. R. 207, 6 W. R. 39, 7 W. R. 157, 15 W. R. 47, 23 W. R. 447.

25. Under s. 33 Act X of 1859, a suit against an agent for an account is barred after the expiration of one year from the determination of defendant's agency; but if the agent delivers an account showing himself to be indebted, a new cause of action arises upon the admission by the settlement of account; and if the account delivered be fraudulent, the suit may be brought within one year from the discovery of the fraud.—2 Hay 509 (Marshall 405), 5 W. R. (Act X) 63; 6 W. R. (Act X) 20, 30. *But see* (as to new cause of action) 5 W. R. (Act X) 91, *and see* Principal and Agent 10; 20 W. R. 386.

26. *Semble* that a suit might be maintained upon such account stated, in which the period of — would be regulated, not by Act X of 1859, but by Act XIV of 1859.—2 Hay 509 (Marshall 405).

27. B being entitled to the reversion expectant on the life-estate of A, a Hindoo widow, A made a deed of gift of the estate to B, which however was not acted upon, A remaining in possession down to the period of her death. After the death of A, B brought a suit to recover possession of the property. *Held* that — commenced to run from the date of A's death, and not from the deed of gift.—2 Hay 648 (Marshall 547). *See* 164 *post.*

28. Where there is proof of the existence of a lakheraj prior to 1790, a zemindar wishing to contest the title must sue within 12 years from the date of his possession. Where

LIMITATION (*continued*).

there is no such proof, no — will apply.—1 R. J. P. J. 102 (Sev. 68).

29. The point to be looked to in adjudicating where — can be successfully pleaded by a lakherajdar against a zemindar who does not sue to assess for 12 years, is not the validity of the title-deeds, but proof of the existence of the tenure as rent-free before 1st Dec., 1790. —1 R. J. P. J. 111.

30. — cannot be allowed to be pleaded for the first time orally on appeal.—W. R. Sp. (Act X) 6 (2 R. J. P. J. 19). *But see* 6 W. R. 129.

31. The Lower Appellate Court was held to have been wrong in raising the question of — when such question had not been raised by the defendant.—L. R. 22, 17 W. R. 429.

32. The invariable rule of Court is to deduct in favor of a plaintiff the whole period of his or her minority, and to count — from the date when he or she ceases to be a minor. —Sev. 44.

33. — must be specially pleaded before it can be applied, except where it is patent on the plaint that — has been exceeded.—Sev. 60; 4 W. R., Mis., 21; 6 W. R. 129; 10 W. R. 59.

34. A suit for resumption of an invalid lakheraj tenure, brought by an auction-purchaser within 12 years after his auction purchase, is not barred by —.—Sev. 80*a*.

35. A defendant may deny plaintiff's right and interest in the property in dispute, and yet plead —.—Sev. 219.

36. A reversioner, if he chooses to sue for reversal of illegal acts of the heir in possession, must bring his action within 12 years of the cause of action; but he, or any other person entitled to inherit, may, as heir vested with rights of succession, bring his action within 12 years of the death of the intervening widow or other party in possession, and thus will be entitled, whether the said heir had sued unsuccessfully or not at all, to obtain a reversal of proved illegal acts whensoever committed by the intermediate wrong-doers.—Sev. 358.

37. It is no ground of special appeal that the plea of — was not adjudicated by the Lower Appellate Court when it was not urged in the written grounds of appeal before it.—Sev. 368 (*two cases on same page*).

38. The decision of 15th April 1861 should be the guide in determining whether the existence of a lakheraj tenure on 1st Dec. 1790 bars the zemindar who does not sue within 12 years.—Sev. 419.

39. No deduction from the period of — can be claimed on account of the period during which an estate was under attachment by order of the Criminal authorities.—Sev. 444.

40. Held that the payment of a share of the profits under the name of *roznama* was such an acknowledgment of plaintiff's title as prevented the possession of defendant from being adverse to plaintiff as long as it continued to be made; and that plaintiff's suit was in time, having been instituted upon the death of the last recipient.—Sev. 481.

41. Plaintiffs having, according to a decision under Act IV of 1840, been out of possession 11 years and 10 months before the date of suit, were required to show very convincing proof that they had been in possession immediately before that decision or within 12 years of their filing the plaint.—Sev. 911.

42. A suit is not barred by — as against parties added after the expiration of the period allowed by law, provided the plaint be filed against the original parties prior to the expiration of such period.—2 Hyde 248. *See* 134, 140 *post*.

43. Where the property of a rebel has been sold, any party claiming an interest in the thing sold is bound, under s. 20 Act IX of 1859, to bring his suit within one year from the date of the order of confiscation.—W. R. Sp. 2, 5; 6 W. R. 42.

44. The doctrine of privity does not arise in questions of —.—W. R. Sp. 34.

45. In the case of a sale by a Hindoo widow which takes away both her rights and the rights of all those who claim under her, — runs from the date of sale.—*Ib.*

46. Temporary possession under a decree subsequently set aside or modified does not entitle the party who so obtained possession to calculate — from that time.—W. R. Sp. 43.

47. In a suit by the surety of a lessee for the refund of rent paid to the wrongful heir of the deceased lessor, the cause of action as against the wrong-doers dates from the time when they were declared by a competent Court to have paid to a party without title; and the cause of action as against the lessee dates from the time when the surety was made to pay the rent to the rightful heir on default of the lessee.—W. R. Sp. 57.

48. In default of application by a person other than a defendant dispossessed of immoveable property in execution of a decree, a suit would not be barred under s. 230 Act VIII of 1859 if brought within 12 years from date of cause of action.—W. R. Sp. 61.

49. Where no law, special custom, or agreement is shown, making the remuneration on a joint contract for labor to be done payable in advance, the cause of action accrues from the time when the labor was performed.—W. R. Sp. 68.

50. Adverse possession which bars a Hindoo widow representing the estate of her deceased husband, also bars the heirs after her.—W. R. Sp. 83. *See also* 8 W. R. 256. *See* 3*a ante and* 164 *post*.

51. How applied in a suit by Government on total failure of natural heirs.—W. R. Sp. 102.

52. In a suit for possession by a purchaser at a sale in execution, no deduction can be allowed from the period of — for the time occupied by the plaintiff in an unsuccessful summary application in the Execution Department.—W. R. Sp. 130.

53. — will not count against a party who has been out of possession under temporary leases.—W. R. Sp. 149. *See* 22 W. R. 520.

54. Pendency of litigation is a sufficient reason to save —.—W. R. Sp. 159.

55. No — applies in the case of persons holding endowed property in trust and under accountability; but no consideration could be shown in such a case to claims so antiquated that difficulty arises in finding any reliable evidence in support of them.—W. R. Sp. 171. *See also* 11 W. R. 333. *But see* 215 *post*.

56. The ground of —, if not pleaded by a party, should not be taken by the Court; and if not pleaded at first, must be held to have been waived.—W. R. Sp. 207. *But see* 6 W. R. 129.

57. The plea of —, when not taken in the Court below, was not allowed to be urged in special appeal.—W. R. Sp. 212. *See also* W. R. Sp. (Act X) 9, 10 W. R. 425, 11 W. R. 32, 12 W. R. 215, 18 W. R. 252, 21 W. R. 298. *But see* 6 W. R. 129.

58. The rule that mutual accounts, if they contain some item or items within 12 years, will not be barred by — though the rest of the items be beyond time, is confined to accounts between two parties which show a reciprocity of dealings, *i.e.* mutual credits and debts.—W. R. Sp. 235. *But see* 16 W. R., P. C., 1.

59. How applied in a suit to recover excess rents collected by one of two co-sharers who hold their shares separately and collect their rents separately.—*Ib. But see* 16 W. R., P. C., 1.

60. The — prescribed by s. 246 Act VIII of 1859 cannot be applied to suits to question orders made before that Act came into operation.—W. R. Sp. 237. *See* 3 W. R. 62, 7 W. R. 138.

61. A decision on the plea of — in bar is not necessary where the decision on the merits is clearly and wholly against the plaintiff.—W. R. Sp. 247 (L. R. 36). *See* 193 *post*.

62. In a suit by a daughter to inherit immoveable property by setting aside defendant's adoption by her mother, a Hindoo widow, the cause of action was held to have arisen from the date of the adoption, and the suit governed by 12 years' — from that date.—W. R. Sp. 272. *See* 11 W. R. 468.

63. A claimant for pre-emption may sue any time before expiry of a year from the date of transfer of possession. A mortgagee's absolute right and his claim to pre-emption arise from the time the sale becomes absolute.—W. R. Sp. 285 (L. R. 67).

64. The non-receipt of a share of the profits of an estate is no cause of action between shareholders from which — runs.—W. R. Sp. 296 (L. R. 79).

65. How applied in a suit to set aside an auction sale made before the passing of Act VIII of 1859, where the recorded purchaser was made a defendant by a

LIMITATION (*continued*).

supplemental plaint after the period of — had expired.—W. R. Sp. 316 (L. R. 94).

66. The allegation of possession for 30 years, in reply to plaintiff's claim to recover possession, raises the plea of —, though it may not be raised in so many words.—W. R. Sp. 358 (L. R. 132).

67. According to s. 20 Act IX of 1859, a suit for possession of confiscated property under title must be brought within one year of attachment or seizure. Proceedings to foreclose are not the *suit* contemplated by that law.—W. R. Sp. 377 (L. R. 150), 14 W. R. 114.

68. — cannot apply in a suit by the purchaser of a Mahomedan lady's share in her father's property against her brother, for while the property is in the brother's hands, it is in the hands of a trustee and not in adverse possession.—W. R. Sp. 377 (L. R. 151).

69. Where the time for bringing a suit to resume lakheraj has run out in the lifetime of a father, the right to sue is lost to his heir.—W. R. Sp. (Act X) 132 (3 R. J. P. J. 121).

70. Defendant's offer of a compromise and residence in Foreign territory do not bring plaintiff within the exception in s. 13 Reg. I of 1800 (Bombay Code).—(P. C.) 5 W. R., P. C., 31 (P. C. R. 51).

71. Claims by Meymoodars to recover arrears of village dues are limited by s. 4 Reg. V of 1827 (Bombay Code) to 12 years.—(P. C.) 5 W. R., P. C., 121 (P. C. R. 84).

72. The exception contained in cl. 2 s. 27 Reg. V of 1827 (Bombay Code) was held to apply to a case where a claim was preferred to the authority that was then the supreme power in the State, although a satisfactory and binding decree was not obtained.—(P. C.) 6 W. R., P. C., 38 (P. C. R. 141).

73. In a suit by the Official Assignee of a deceased insolvent to recover a talook conveyed (several years before his insolvency) by the insolvent, who was sole or chief acting executor of his father-in-law's will, as a security for his own debt to his father-in-law, not to any other person in trust for the benefit of any parties who might be entitled to the estate, but to the insolvent's wife who was tenant for life of the residue,—*Held* that, in the absence of any proof of fraud, the widow's continuous and adverse possession for more than 12 years barred the suit.—(P. C.) 4 W. R., P. C., 103 (P. C. R. 278).

74. The words "other good and sufficient cause" in cl. 3 s. 18 Reg. II of 1803 include insanity whether there has been or is a Commission of Lunacy or the like, or not; and the word "precluded" in the same clause does not mean precluded during the whole term of 12 years or merely at its commencement, but means in effect precluded during any part of it.—(P. C.) 4 W. R., P. C., 111 (P. C. R. 287).

75. In computing the 12 years' period of — there should not be reckoned any time elapsing while the person for the time being entitled to seek redress was not free from disability.—*Ib.*

76. A suit is not barred by — under cl. 4 s. 18 Reg. II of 1802 (Madras Code) if plaintiff prefers his claim within the prescribed period to a Court of competent jurisdiction or is prevented from doing so by the irregular proceedings of the Court to which his claim is preferred.—(P. C.) 1 W. R., P. C., 30 (P. C. R. 460).

77. Applicable to a suit by a purchaser at a sale of arrears of revenue.—(P. C.) 3 W. R., P. C., 5 (P. C. R. 563).

78. Under the Punjab Code, and before Act XIV of 1859 took effect in Oude, letters offering to pay a debt by instalments and praying to be excused from the payment of interest, are an ample acknowledgment of the debt to run.—(P. C.) 5 W. R., P. C., 18 (P. C. R. 612).

79. Under the same Code, payments made by an agent upon account, and continued monthly for several months, ought to be regarded as tantamount at least to, if not correctly described as, a running account, and are therefore part-payments which amount to a "partial satisfaction of demand" whereby the period of — is renewed.—*Ib.*

79*a*. As between private owners contesting *inter se* the title to the land, the law has established a — of 12 years, after which time it declares, not simply that the remedy is barred, but that the title is extinct in favor of the possessor.—(P. C.) 7 W. R., P. C., 21 (P. C. R. 676). *See also* 10 W. R. 61, 20 W. R. 104, 114, 231.

80. A suit to establish a right to a share in property in respect of which an application under Act XIX of 1841 was disallowed, may be brought within 12 years from the date of cause of action, and not within one year from the date of disallowance of the said application.—1 W. R. 39.

81. Does not affect a case in which the defendant admits the plaintiff's claim within the period of — but pleads satisfaction.—*Ib.*

82. A suit to set aside the adoption of a second son must be made within 12 years from cause of action.—1 W. R. 62.

83. Plaintiff's claim to rent barred by — when urged against mokurrureedars who have been in possession 30 years, and plead a right as owners.—1 W. R. 80.

84. A party sued for recovery of possession of certain lands as resumed lakheraj, if he establishes his possession of the disputed lands for more than 12 years prior to suit, is, notwithstanding the decree of the Resumption Courts, entitled to the benefit of —.—1 W. R. 109.

85. Cannot be pleaded in a suit brought by a guardian at any time during the minority of his ward.—1 W. R. 132.

86. Cannot be applied to the suit of a zemindar alleging a *mourosee* title derived from another zemindar, unless such other zemindar is made a party and pleads —.—1 W. R. 172 (3 R. J. P. J. 226).

87. Not applicable when the validity of the subordinate tenure is in dispute.—1 W. R. 172.

88. A suit between the lessees of two co-sharers, where defendant has held the land exclusively for more than 12 years, may be barred by —.—1 W. R. 202.

89. Ignorance of a public sale is no ground of exemption from the operation of the Statute of —.—1 W. R. 213.

90. Though a ryot cannot plead — adversely to his zemindar, two ryots can do so when contending between themselves as to right of possession.—1 W. R. 265.

91. Bars a suit for resumption even of a questionable lakheraj of which the lakherajdar's ancestors are proved to have been in possession before 1790.—1 W. R. 297.

92. No deduction from period of — is allowable for pendency of litigation in a wrong Court.—1 W. R. 328.

93. No — in a suit for possession by landlord against a tenant who holds over and pays his rent after the expiry of his lease.—1 W. R. 341 (3 R. J. P. J. 349). *See* 8 W. R. 55.

94. In a suit for possession —, when pleaded, is the first issue for decision and a distinct finding thereon; possession "of late years" is no distinct finding.—2 W. R. 153. *See also* 5 W. R. 204.

95. In a suit for re-imbursement of payments made by a sharer over and above her share, to save property from sale in execution, the cause of action accrues from the date of payment.—2 W. R. 159, 7 W. R. 29, 12 W. R. 194, 14 W. R. 480.

96. If, during the pendency of an Act IV case, both parties are in possession, or are struggling for possession, — does not begin to run against either party before the time of final ejectment under the Judge's order.—2 W. R. 162.

97. — applies equally where there has been an Act IV award, whether a party bound by it chooses to ignore it or sues to establish his right by reversal thereof.—2 W. R. 182.

98. — cannot be pleaded in a suit for declaration of title regarding *ijmalee* lands upon which another co-sharer has built temples and established idols.—2 W. R. 183.

99. How applied in a suit for possession of an estate where plaintiff proves his title to succeed on death of owner's widow.—2 W. R. 197.

100. A suit brought under s. 10 Reg. XIX of 1793, to assess or resume invalid lakheraj created subsequently to 1st Dec. 1790, is exempt from —.—(F. B.) 2 W. R. 205 (4 R. J. P. J. 194). *See also* 2 W. R. 258 (4 R. J. P. J. 200), (P. C.) 20 W. R. 459.

101. A suit brought under s. 30 Reg. II of 1819, must be assumed to relate only to lakheraj created prior to 1st Dec. 1790, and is therefore not exempt from — under s. 10 Reg. XIX of 1793.—(F. B.) 2 W. R. 207 (4 R. J. P. J. 197). *See also* 2 W. R. 258 (4 R. J. P. J. 200); 2 W. R. 302, (P. C.) 20 W. R. 459.

102. According to the former procedure, where a suit brought before a competent tribunal ended in a non-suit, the period of — was computed from the accruing of the original cause of action, the time while the first suit was pending being deducted.—2 W. R. 256.

LIMITATION (*continued*).

103. A reversioner cannot, during a Hindoo widow's lifetime, sue to set aside a sale made by her if 12 years have elapsed since the date of the sale, though he may, during her lifetime, sue to have the sale declared void and to prevent waste. Such — does not affect reversioner's right of suit after the widow's death when he succeeds as heir.—2 W. R. 271. *See also* 10 W. R. 276, 15 W. R. 1, 20 W. R. 1. *See* 164 *post*.

104. In a suit for a certificate and for possession of moveable property by a purchaser at a sale in execution, — will not reckon during the time that the judgment-debtor's case to set aside the sale was pending in the Civil Court.—2 W. R., Mis., 9.

105. In a suit by co-heirs for a share of property taken possession of by a collateral heir.—3 W. R. 12.

106. How computed in a suit instituted in Pubna, but ordered by the High Court to be transferred to Dacca, the Judge of Pubna returning the plaint in order to its being presented anew in the Dacca Court.—3 W. R. 20.

107. The time that the Courts are closed must be deducted from the period of —.—3 W. R. 46. *But see* Time 7, and Limitation (Act XIV of 1859) 77.

108. The issues of — and title should be tried separately and not mixed up together.—3 W. R. 226.

109. Neither s. 77 Act X nor s. 5 Act XIV but the ordinary law of — applies to a suit to obtain a declaration of title by setting aside a plea of partition urged in a former suit for rent.—3 W. R. (Act X) 6.

110. A son has no new cause of action on succeeding to his father. The — that bars the father bars the son.—3 W. R. (Act X) 121.

111. Where only part of a claim is barred by —, a decree may be given for the remaining portion.—3 W. R. (Act X) 131.

112. The period of — for taking out execution of a decree counts from the date of the final judgment in the case.—3 W. R., Mis., 21.

So also under s. 20 Act XIV.—6 W. R., Mis., 38. *See* 5 W. R., Mis., 45.

113. The admission of a debt after execution is taken out, gives a judgment-creditor a fresh starting-point from which to reckon —.—3 W. R., Mis., 27; 5 W. R., Mis., 12, 31; 6 W. R., Mis., 115; 8 W. R. 63.

114. How applied in a suit to recover possession of ancestral or other property attached for sale, where the sale was only of rights and interests in the loose way obtaining under the old procedure.—4 W. R. 34, 6 W. R. 297, 9 W. R. 199.

115. The plea of — need not of necessity be decided before the merits of the case can be approached.—4 W. R. 61, 8 W. R. 364, 12 W. R. 286. *See* 119 *post*.

116. How applied when a plaintiff, alleging that he was in possession, sues for cancelment of a Survey award demarcating the land as a portion of lands in defendant's possession.—4 W. R. 100.

117. The remedy by suit in a Foreign Court continues open for the period prescribed by the law of that Court without reference to our own law of —.—4 W. R. 107.

118. Period of — for a suit in a Foreign judgment.—*Ib.* *See also* 8 W. R. 32.

119. The plea of — may be heard after the other objections have been disposed of.—4 W. R., Mis., 10.

120. — against an adopted son will count from the time of his attaining majority.—5 W. R. 27.

121. May be pleaded by a talookdar of a revenue-paying estate against the owner thereof, when the latter sues a lakherajdar of certain land in the estate of which the talookdar is in possession.—5 W. R. 58.

122. The Lower Appellate Court reversed the decree of the first Court dismissing the suit on the ground of —, and remanded the case for trial on the merits. The first Court on remand decreed the suit on the merits. The defendants appealed, and the Lower Appellate Court dismissed the suit on the merits, refusing to go into the question of — because no special appeal had been preferred from its former order on that point. The plaintiff appealed specially. *Held* that the first decision of the Lower Appellate Court ruling that — did not apply was a *decree in appeal* under s. 351 Act VIII, and not an order *prior to decree* under s. 363, and that the defendant could urge the point of — under s. 348; and as the plaintiff had again appealed from the decision against him on the merits, although the defendant might have appealed specially against the first decision of the Lower Appellate Court on the question of — within 90 days from that decision, he was at liberty to appeal against it at any time within 90 days from the time of the final decree disposing of the whole case.—(F. B.) 5 W. R. 91. *See* 6 W. R. 61, 7 W. R. 331, 10 W. R. 209, 11 W. R. 329.

123. In a regular suit brought under s. 18 Reg. VIII of 1819 to enable plaintiff to proceed against a gomashta's immoveable property, after failure to recover in execution in a summary suit under Reg. VII of 1799,—*Held* that the cause of action in the regular suit was the same as that in the summary suit, and that the period of — must be reckoned from the time when the summary decree in respect of it was given, or the time at which plaintiff first discovered that he could not obtain satisfaction of the summary decree.—(F. B.) 5 W. R. 100. *See also* 7 W. R. 48.

124. A suit brought by a *cestue-qui-trust* to set aside, as fraudulent, certain alienations made by the trustee, is not barred merely because more than 12 years have elapsed since the alienations were effected. The benefit of the law of — cannot be claimed by purchasers of property cognizant of a subsisting trust affecting the property.—5 W. R. 120.

125. A suit for refund of income tax paid twice over in two different districts is barred by — under s. 245 Act XXXII of 1860, if brought after 3 months from the accrual of the cause of action.—5 W. R. 137.

125*a*. S. 246 makes no distinction in favor of cases not decided on the merits, but makes it imperative on the party whose claim has been rejected under any circumstances to sue within one year.—5 W. R. 213. *See also* 7 W. R. 252; (F. B.) 256, 441; 21 W. R. 133; 22 W. R. 39. *But see* 12 W. R. 33.

126. An infructuous Survey award, not followed by possession, is no answer to a plea of adverse possession for more than 12 years after the date of the award.—5 W. R. 242.

127. Dishonesty in obtaining possession will not prevent the possessor from availing himself of the law of —; but the law cannot relieve him from the charge of dishonesty.—5 W. R. 283.

128. — runs from the date of the last judgment by which the whole decree becomes final, and not from the date of an incomplete decree (*i.e.* where a case is partly decreed and partly remanded).—5 W. R., Mis., 6.

129. There is no law or rule of practice which stays — in cases of execution pending the period a decree-holder may be under legal disability.—5 W. R., Mis., 10.

130. An appeal struck off for default does not give the decree-holder a fresh starting-point in calculating —.—5 W. R., Mis., 11.

131. A non-suit gives no new cause of action.—6 W. R. 15.

132. How reckoned in a suit for possession after dispossession under a compromise inimical to plaintiff's interests, which was executed by his guardian when he was a minor.—6 W. R. 18.

133. Possession as a trustee for a brother's widow is not adverse possession against her.—6 W. R. 61.

134. Where a plaintiff is admitted as a co-plaintiff under s. 73 Act VIII, — will count against him, not up to the date of his own admission, but up to the date of the filing of the original plaint.—6 W. R. 172. *See* 42 *ante* and 140 *post*.

135. A question of — cannot be raised by defendant, in a case remanded on a point affecting the merits, after that point has been tried and determined against him.—6 W. R. 178.

136. Where property to which a Hindoo widow has relinquished her right in favor of her husband's heirs is claimed by other persons subsequently as the husband's heirs, the cause of action of such other persons accrued from the time when the then reversionary heirs came into possession of the property.—6 W. R. 180.

137. How applied in a suit for a declaration of right to receive rent where the defendant sets up an adverse holding.—6 W. R. 218.

138. A plaintiff who seeks in the Civil Court to establish a right to settlement under Reg. VII of 1822, and to reverse the orders of the Revenue authorities in the defendant's favor, must sue within 12 years.—6 W. R. 218.

LIMITATION (*continued*).

139. A Court deciding a case on — ought also to go into the merits.—*Ib.*

140. Where a person is substituted or added as a defendant under s. 73 Act VIII, the suit is commenced against that person at the time he is made a defendant and not before. —6 W. R. 298, 14 W. R. 377. *But see* 10 W. R. 317. *See* 42, 134 *ante*, and 8 W. R. 243.

141. — does not apply to a case where the former condition of the lands sued for became entirely altered and the former landmarks destroyed by diluvion.—7 W. R. 42.

142. The cause of action in respect of accretions accrues from their formation and delivery to the defendant.—7 W. R. 89, 231, 457.

143. — does not apply to a claim for a declaration of title, where the plaintiff is in possession of the land regarding which the declaration is required and requires no consequential relief.—7 W. R. 96.

144. A Collector's act of taking a dependent talook into *khas* management is not one of dispossession from which — can reckon.—7 W. R. 182.

145. — held to apply in a suit for ejectment on the ground of failure to clear a defined area by a certain time.—7 W. R. 209.

146. A zemindar suing for resumption of alleged invalid lakheraj under s. 10 Reg. XIX of 1793, is not limited to time provided he can prove that, at some time subsequent to the Decennial Settlement, the land sought to be resumed was part of his *mál* land and had paid rent.—7 W. R. 240. *See* 12 W. R. 440.

147. — should be reckoned from the day a plaint is filed, and not from the day it is registered.—7 W. R. 241.

148. A minor is not bound to sue within 3 years of order passed under s. 246 Act VIII rejecting an objection to a sale of attached property preferred by his alleged guardian who neither took out a certificate under Act XL of 1858 nor obtained Court's permission under s. 3 of that Act to appear in the suit without a certificate.—7 W. R. 399. *See* 10 W. R. 8.

149 Where a claim was rejected as not coming under s. 246 Act VIII at all, the period of — prescribed by that section was held not to apply.—7 W. R. 441, 14 W. R. 367, 16 W. R. 22. *See* 15 W. R. 311, 20 W. R. 344.

150. Where plaintiff had applied for the attachment of a property, and on defendant's objection the property was released from attachment, the plaintiff was held bound, under s. 246 Act VIII, to sue to establish his right within one year from the order of release.—7 W. R. 456.

151. How applied to a suit brought by a Hindoo lady claiming to be a reversioner, against a devisee whose rights were ultimately acknowledged by testator's widow.—8 W. R. 323.

152. Where immoveable property is attached for sale in execution, a third party claiming a portion is not bound to sue within one year after delivery to the auction-purchaser. —8 W. R. 358.

153. A hostile claimant, alleging a proprietary right, and endeavouring to prove it, would, by a 12 years' occupation, be entitled to set up a plea of —.—8 W. R. 394. *See also* 2 Hay 487.

154. How applied where plaintiff having granted a putnee of certain land, bought it in on its being ultimately sold for arrears of rent, and on taking *khas* possession, found that the plot had been encroached upon by defendant, who had been in wrongful possession for more than 12 years.—8 W. R. 444.

155. When the plea of — is raised for the first time on remand, the question not arising in the pleadings, the Lower Appellate Court is not bound to take it up.—8 W. R. 451.

156. A suit for damages, mainly grounded on a fraudulent breach of contract, is not barred by the — of 3 years.—9 W. R. 92.

157. How applied in a suit brought in 1272 to recover possession of land said to have been purchased in 1262, where defendant is alleged to have held the property up to 1265 under an ijara, and defendant pleads possession under a prior purchase from the same vendor in 1267.—9 W. R. 106.

158. How applied (with reference to s. 5 Reg. IX of 1812 and cl. 9 s. 1 Act XIV) in a suit by a pleader to recover fees in three suits, where, in one case, defendants agreed to pay according to law, and in the others there was no written engagement.—9 W. R. 113.

159. How applied to *bhurat* lands or khals.—9 W. R. 124.

160. A defendant setting up title and — may succeed on — even if he cannot prove title; the *onus* of proving that he is within time lies on the plaintiff.—9 W. R. 131. *See* 12 W. R. 44.

161. The plea of — cannot be properly decided without deciding upon what date the cause of action accrued, and not merely upon what date the plaintiff's right to sue accrued.—9 W. R. 251.

162. The rule prohibiting a tenant from pleading — against his landlord does not apply where the plaintiff's case is that the lands in dispute lie in an estate within which defendant did not admit tenancy.—9 W. R. 378.

163. The plea of — over-ruled in the Court of first instance, and not brought before the Lower Appellate Court, cannot be entertained in special appeal.—9 W. R. 452.

164. In the case of succession by a reversionary heir after the death of a Hindoo widow who takes by inheritance from her husband and is dispossessed, the period of — as against the reversionary heir, in the absence of fraud, is not to be reckoned from the time when he succeeds to the estate, but from the time at which it would have reckoned against the widow if she had lived and brought the suit.—(F. B.) 9 W. R. 460, 505, (*affirmed by P. C.*) 23 W. R. 214. *See also* 11 W. R. 289, 12 W. R. F. B. 14, 12 W. R. 97, 13 W. R. 52.

165. In a suit against a trespasser, the cause of action of a purchaser of an under-tenure sold under s. 105 Act X free from incumbrances under a sale for arrears of rent, accrues when he purchases the tenure and not before.—10 W. R. 15. *See* 17 W. R. 175, 377.

166. Where a Survey award relates to land belonging to two parties whose rights and interests are distinct and separate, and one of the parties appeals against the award, — runs against the other party, not from the date of such appeal, but from the date of the Survey award.—10 W. R. 48.

166*a*. Where the holder of a decree under Reg. VII of 1799 sold his rights in the decree, and after substituting the purchaser's name for his own as decree-holder fraudulently received from the judgment-debtor moneys under that decree,—*Held* that — would run against the purchaser from the time he discovered the fraud.—10 W. R. 104.

167. In a suit to recover advances made from time to time for work and on other account, money having been entrusted to defendant to be accounted for by him, it was held that the matter partook of the nature of a trust to which no — would apply.—10 W. R. 174.

168. Where a plaintiff sues to establish proprietary rights against a mokurrureedar, it is not necessary for him to prove that he has been in actual possession within 12 years.—10 W. R. 192.

169. How applied (with reference to ss. 86 and 227 Act VIII) to the adjudication of a claim to attached property after its rejection on the ground of having been presented too late.—10 W. R. 305.

170. Where a defendant pleaded —, but rested the issue on the simple fact of possession for 12 years and afterwards, and the issue was found against him, he could not in special appeal object that the finding did not dispose of the issue of —.—10 W. R. 389.

171. As applied to — where a mortgage has not legally been put an end to.—10 W. R. 478.

172. In what cases — may be pleaded by Government in a suit brought against the estate of the ex-King of Delhi.—(P. C.) 10 W. R., P. C., 55.

173. How to rebut the plea of — in a suit for possession by the purchaser of the rights of a reversioner to a widow's estate.—11 W. R. 178.

174. A part payment under a decree may be proved for the purpose of avoiding —, although the payment has not been made through the Court or certified to the Court under s. 206 Act VIII.—11 W. R. 232, 15 W. R. 66, (*affirmed by F. B.*) 13 W. R. F. B. 40.

175. No discretion is allowed to a Civil Court to extend the month allowed for applications under s. 230 Act VIII, even though the Court is closed, or the Judge absent, the whole of that period.—11 W. R. 259.

176. The date of defendant's restoration to possession by the Civil Court after illegal ejectment by plaintiff cannot be taken as that on which plaintiff's — accrued, so as to

LIMITATION (*continued*).

enable plaintiff to plead his own wrong in order to avoid —.—11 W. R. 452.

177. Where a tradesman supplies goods from time to time on credit to a customer who makes payments from time to time on account (no fixed period of credit being agreed upon), the cause of action for purposes of — must be taken to arise on the date when each item claimed was supplied.—11 W. R. 529.

178. Where the parties intend that all goods delivered within a fixed period are not to be paid for until the end of such period of credit, — runs not from the time of the purchase or delivery, but from the expiration of credit. —*Ib.*

179. There is no distinction between a claimant under an execution sale and a claimant under any other conveyance or assignment, with reference to the operation of the Statute of —.—(P. C.) 11 W. R., P. C., 29.

180. In a suit by a reversioner to recover possession by setting aside an adoption made by a Hindoo widow, the cause of action accrues to the reversioner from the death of the widow, when the right of entry first accrued to the reversioner.—(F. B.) 12 W. R. F. B. 14. *See* 13 W. R. 52, 17 W. R. 11.

181. The — of one year in s. 246 Act VIII does not apply to a suit for declaration of right and confirmation of possession.—12 W. R. 33. (*Over-ruled*) *see* 21 W. R. 133, 22 W. R. 39.

182. Where a defendant died after issue of summons and before filing of plaint against him, and the Court had no jurisdiction to decide the case against him, the time during which the suit was being prosecuted *bonâ fide* and with due diligence against the dead man may be deducted in calculating the period of — against his representatives.—12 W. R. 45.

183. Plaintiff, having made over his property in trust to defendant, went abroad for more than 12 years, and then returned and demanded restoration of the property. Five years after such demand he sued to recover possession, and it was held that the suit was brought in time from the date of the demand.—12 W. R. 319.

184. Where a landlord seeks to obtain *khas* possession, the tenant is at liberty to plead — in bar, if he has been in occupation under a title like that of a dur-howladar for a period of more than 12 years.—12 W. R. 364. *See* 18 W. R. 443.

185. — does apply to a suit to establish a right to maintenance.—12 W. R. 524.

186. Where a plaintiff brought a suit in 1856 to recover landed property which was in the possession of the defendant since 1845 and at the time of the institution of the suit,—*Held* that, before plaintiff could recover, he must prove (1) possession within 12 years, and (2) title to possession.—(P. C.) 13 W. R., P. C., 23. *See* 19 W. R. 209.

187. As applied under s. 246 Act VIII, where a plaintiff, after having had his claim summarily rejected, sues within one year to have the sale of certain property set aside and his own title declared.—13 W. R. 78.

188. A suit for possession and mesne profits, where defendants plead a mokurruree tenure, will be barred by — if defendants can prove that they have held under the mokurruree tenure for more than 12 years previous to the institution of the suit, to the knowledge of the plaintiff.—13 W. R. 129, (*affirmed by P. C.*) 19 W. R. 252.

189. In a suit by an execution-purchaser to recover possession as against a trespasser, plaintiff should not be strictly bound to the accrual of the cause of action as alleged in his plaint, so long as that is proved to have arisen within 12 years before the commencement of the suit.—13 W. R. 269.

190. The rule of law laid down by the Privy Council that a person entitled to an interest in immoveable property loses, not only all remedy, but his title, by being out of possession for more than 12 years, was held to apply to the case of a recusant proprietor claiming *malikhana*.—13 W. R. 465. *See also* 22 W. R. 520.

191. Where a defendant by whom *malikhana* was payable caused the right of *malikhana* to be sold, he was not allowed in equity to avail himself of the plea of — in a suit by the purchaser for arrears of *malikhana*.—14 W. R. 204.

192. Where members of a joint family reside in different portions of the family property, one taking charge of one shop and another of another, the member of the family who has the more valuable shop cannot be allowed at the end of 12 years to set up — and exclude his brother from participating in the profits of that shop.—14 W. R. 228.

193. The trial of the issue of — after the trial of the issue on the merits, is an irregularity which, if committed in an Appellate Court, is not necessarily productive of any disadvantage even to the defendant.—14 W. R. 267.

194. A sub-lessee without title cannot plead — against the landowner either himself or through his lessor.—14 W. R. 357.

195. The law of — under s. 246 Act VIII cannot apply to a person who comes in too late to be made a party to the proceedings under that section.—14 W. R. 364. *See* 15 W. R. 311.

196. Intermediate holders setting up as mokurrureedars are not debarred from pleading — against their landlord.—15 W. R. 232. *See also* 17 W. R. 271.

197. The plea of — was not allowed to be heard in bar to the admission of an appeal to the Privy Council after the appeal had been admitted and the appellant allowed to incur large costs for translation, etc., and the record was nearly ready for transmission.—15 W. R. 255.

198. Defendants for a consideration granted plaintiffs a lease of certain churs, which were an accretion to defendant's zemindaree and had been in the possession of Government for several years but were at the time under temporary settlement with defendants. Subsequently defendants sold their zemindaree to a third party reserving to themselves the churs. Ultimately the Commissioner of Revenue ordered the churs to be settled with the purchasers (the third party) as appertaining to the zemindaree; and defendants being thus unable to give plaintiffs possession were sued for a refund of the consideration-money. *Held* that defendants ought to have called in question the Commissioner's decision, and that their manager's admission of their liability to repay the consideration-money put an end to any claim for damages for the original breach of contract and constituted a fresh cause of action from which — ran.—15 W. R. 298.

199. As pleaded against a person who, having had possession of a moiety of certain lands delivered under s. 224 Act VIII, obtains an Act IV award whilst another suit is pending and defendant's pleader admits in Court that the only question remaining to be decided is one of costs.—15 W. R. 307.

And as applied against a person who, having had possession given to her under s. 224. took no steps to obtain actual possession.—23 W. R. 407. *See also* 24 W. R. 418.

200. Adverse possession cannot be set up, nor — pleaded, as between persons jointly entitled to land and registered as joint proprietors thereof.—16 W. R. 42.

201. S. 29 Act VIII of 1869 (B. C.) only applies to suits for *arrears of rent*, and not to suits involving mixed questions, the — applicable to which is that prescribed by Act XIV of 1859.—16 W. R. 61, 287; 18 W. R. 8. *See also* 23 W. R. 152. *See* 19 W. R. 347.

E.g. a suit to recover *nukdee* and *bhaolee* rent.—24 W. R. 382.

202. A suit under s. 30 Act VIII of 1869 (B. C.) against a gomashta to obtain accounts after the agency has determined, must be brought within a year from such determination.—16 W. R. 149, 20 W. R. 386.

203. Under the proviso in that section, which refers to suits for money, where a fraudulent account has been given in by the agent, concealing the fact of the receipt of certain moneys, the zemindar has one year from the discovery of the fraud to bring his suit for such money.—*Ib.* *See* 22 W. R. 398.

204. The — applicable to a suit to void a *butwarra* by the Collector.—16 W. R. 271.

205. In the case of a promissory note payable on demand, the parties to which are Hindoos, — begins to run from the date of demand.—17 W. R. 87.

206. The period of — which bars the claim to a settlement does not begin to run so long as the proprietary right of the zemindar is formally recognized by the Revenue authorities (*e.g.* by temporary settlements) and no permanent settlement is made with any other person.—17 W. R. 145.

207. — reckons against the reversioners or next heirs of a deceased person only from the death of the widow or the immediate heirs of the deceased.—17 W. R. 287.

LIMITATION (*continued*).

208. During pendency of a suit (which was finally decreed) to establish a right to a fishery, plaintiff sued to recover damages from defendant for obstructing him from fishing; but his suit was dismissed as premature. After final determination of his title, he sued again to recover damages, and the suit was held to be one for mesne profits and governed by the six years' —.—17 W. R. 360.

209. After adverse possession of immoveable property for more than 12 years, a new period of — cannot commence to run by the mere transfer of rights.—17 W. R. 377.

210. The cause of action to a co-sharer for damages caused by the digging of a tank by a party to whom a pottah was given by plaintiff's co-sharers without plaintiff's consent, was held to accrue when the tank was dug.—17 W. R. 387.

211. Plaintiff brought a suit within the very verge of the period of —, but did not obtain a decree as it was held that no fresh order was required in that suit, and that an order passed in a former suit was sufficient for the purpose of that case. Instead of appealing from that decision, he brought the present suit, which was held barred by —, his cause of action remaining intact.—17 W. R. 450.

212. Plaintiffs purchased the rights of B at a sale in execution and obtained symbolical possession; but on attempting to take manual possession, were ejected by defendants. *Held* that his cause of action arose from the ouster.—17 W. R. 464.

213. The plea of — was held to fail in a case where it was impossible to distinguish the defendant's possession in his own right from his possession as farmer of the plaintiff.—18 W. R. 34.

214. The "year" within which a suit is to be brought under s. 27 Act VIII of 1869 (B. C.) should be calculated according to the British Calendar.—18 W. R. 403.

So also the "months" under s. 29.—23 W. R. 275.

215. A suit to establish a right to a beneficial interest in the surplus proceeds of *debuttur* land after providing for the worship of the idol, where the parties were *sebaits*, was held to be, not a suit between co-trustees to the share claimed, but one to which the law of — could apply.—19 W. R. 35.

216. Of an estate left by H M, his son's widow (R) became the rightful owner of a moiety and his daughter's husband (S) to the remaining moiety. S conveyed to B by a deed of gift two annas out of his eight-anna share; and within the period of —, commenced a suit against the Ms for the whole of H M's estate, but pending the suit, J was substituted as plaintiff under a deed of sale from S to him, and obtained a decree for an eight-anna share. R (one of the defendants) appealed against the decree and had it modified against her to a five-anna share. The Ms did not appeal and the decree remained against them for eight annas. In another suit B's title to two annas under the deed of gift from S was established against J, who afterwards sold to the Ms the five annas which he had obtained and all his right, title, and interest under the decree. The Ms thus got possession of the two-annas' share which J ought to have held in trust for B. *Held* that B's cause of action for the recovery of his two-anna share arose at a period subsequent to the execution of the decree by J, and was within the period of —.—(P. C.) 19 W. R. 101. *See also* 23 W. R. 329, 24 W. R. 418.

217. A suit, not simply one to recover occupancy of land from which plaintiff as a tenant has been ejected by the person who is entitled to receive rent for the same, but claiming a right to enjoy possession of the land for a term of years upon the footing of a mortgage transaction, is not governed by the — prescribed by s. 27 Act VIII of 1869 (B. C.), which only applies to transactions between parties between whom the relation of landlord and tenant subsists.—19 W. R. 160.

218. In a suit to establish a right of enhancement of rent of an under-tenure, the holder of which contended that even if the zemindaree right had passed to plaintiff by purchase, he had never received rents and his claim was barred by —, and with reference to a compromise under which, at the close of a former litigation, a certain sum had been paid to plaintiff as mesne profits, it was argued that the last item of the rent of the under-tenure, entering into that sum, must have accrued more than 12 years previously,—*Held* that the payment of the sum within the 12 years was evidence of a recognition of title sufficient to exclude the notion of an adverse possession for more than 12 years.—(P. C.) 19 W. R. 171.

219. Where a judgment-debtor who has appealed to the Privy Council obtains a rule *nisi* from the High Court suspending execution until security is given, and this rule is subsequently made absolute, it does not operate against the decree-holder in the matter of time; — not running against him until the result of the appeal is known, or the rule otherwise falls to the ground.—19 W. R. 186.

220. Ignorance of the cause of action having accrued does not give a plaintiff a longer time for suing, unless the ignorance has been produced by the fraud of the defendant.—19 W. R. 269.

221. Where parties are living together in commensality and in joint possession of property, no cause of action arises to one of them for the recovery of his share until he is dispossessed by the others, and — runs from the date of such dispossession.—19 W. R. 344.

222. An agreement of the parties to refer the question of title to arbitration implies an undertaking by defendant to give up possession if the decision be against him; and his refusal to deliver up possession constitutes a new cause of action very different from any mentioned in s. 27 Act VIII of 1869 (B. C.).—20 W. R. 19.

223. Where land situated within a talook is used by neighbouring villages as a grazing common for the pasturage of their cattle, the presumption is that it is used with the consent of the talookdar, against whom — cannot run by reason of such use as if he were out of possession.—20 W. R. 285.

224. The object of s. 29 Act VIII of 1869 (B. C.) is to fix the maximum of time within which suits for arrears of rent at enhanced rates ought to be brought, and not to create a bar to the institution of such suits before the expiration of the year on account of which the arrears are claimed.—20 W. R. 329. *See* 23 W. R. 134, 25 W. R. 381.

225. S. 27 of the same Act does not apply to a suit for abatement of rent in consequence of plaintiff having been dispossessed of two mouzahs included in his lease for which separate rents were fixed.—20 W. R. 347.

226. To what cases the — under s. 246 Act VIII of 1859 is and is not applicable.—20 W. R. 393, 22 W. R. 36.

227. *Quære.* Whether, upon consent of parties or otherwise, the Court has power to extend the period of — under s. 58 Act VIII of 1869 (B. C.).—20 W. R. 395.

228. The — prescribed by s. 27 Act VIII of 1869 (B. C.) applies only to simple cases of possessory actions against persons entitled to receive rent, and not to suits setting out title and seeking to have rights declared and possession given in pursuance thereof.—21 W. R. 53, 122; 23 W. R. 460. *See also* 25 W. R. 217.

229. A suit against an agent for the recovery of money under s. 30 Act VIII of 1869 (B. C.), though brought within three years after the termination of the agency, was held barred as not brought within a reasonable time from the date of the discovery of the fraud alleged against the agent.—21 W. R. 107.

230. The claim in a suit to recover money due on payment in kind for the use of land by stacking timber on it is of the nature of one for rent and is governed by the — applicable to money-claims of that kind.—21 W. R. 124.

231. In a suit for possession of land with mesne profits, proof of payment of a part of the profits is sufficient to prevent the operation of the law of —.—21 W. R. 180.

232. There is no — but that prescribed in s. 30 Act VIII of 1869 (B. C.) to the bringing of a suit against an agent with regard to zemindaree matters (*e.g.* a tehseeldar) for the recovery of money or delivery of accounts and papers.—21 W. R. 240.

233. A — of 3 years is applicable to a suit upon a verbal contract.—21 W. R. 267.

234. The — prescribed in s. 20 Act IX of 1859 cannot be construed as implying any saving with respect to persons under disabilities, Act XIV of 1859 notwithstanding.—(P. C.) 21 W. R. 318.

235. An objector's claim under s. 246 Act VIII having been disallowed, he brought a regular suit to establish his right and stay the sale, and this being dismissed, he brought a second suit for declaration that the property

LIMITATION (*continued*).

which was still in his possession was his and was not affected by the sale,—*Held* that, in calculating —, no deduction could be made for the time consumed in the first suit.—22 W. R. 162.

236. In a suit to recover possession of certain villages belonging to a talook which had been sold by Government for arrears of revenue, where plaintiff alleged that they ought not to have been sold as they were not subject to revenue but were Mocassa villages which had been alienated from the zemindaree and paid a quit-rent only to the zemindar, the second defendant who was the purchaser and in actual possession pleaded — as a bar, and plaintiff urged that a fresh cause of action arose in consequence of some proceedings of the Government by which they made a new grant of the villages to the second defendant at an increased revenue. *Held* that such grant would not give a new cause of action and cannot affect the time when the only cause of action arose to plaintiff.—(P. C.) 22 W. R. 187.

237. In a suit for abatement of rent founded on an agreement that, at a certain time, the land should be measured, and if found less than the quantity named in the agreement, there should be an abatement of rent, it having been found that plaintiff never claimed abatement but continued to pay the rent for 6 years, the suit was held barred by —.—22 W. R. 275.

238. Payment of *malikhana* by E on account of land held jointly by E and A, will save the operation of — against A.—22 W. R. 551.

239. Where a plaintiff sued to establish his right to recover certain rents, and after obtaining a decree, brought another suit for arrears of rent, he was held entitled to a decree for the rents of three years only, as there was nothing to prevent his including in the former suit a claim for rent as well as for declaration of right.—23 W. R. 280.

240. In a suit for possession against a *meerasdar* who pleaded —, the Judge was held to have been in error in adding to the time for which the defendant had held under the *meeras* lease, the period of possession by the lessor, because the one is not in continuation of the other; the holding of the lessor being quite a different thing from the holding of the lessee.—23 W. R. 331.

241. Where a decree declared plaintiff entitled to get possession of a certain quantity of land on a *butwarra* being made, and the decree-holder, after allowing his right to be barred by lapse of time, applied to the Collector and had a *butwarra* effected and obtained merely formal possession. such possession was held to give him no fresh cause of action.—24 W. R. 33.

242. A purchaser at a sale of a Government khas mehal does not require any peculiar right different from that of any other proprietor; nor does the fact of his purchasing from Government give him 60 years within which to bring a suit for possession or any further time than is allowed to any other purchaser by the ordinary law of —.—24 W. R. 64.

243. The Courts of this country have no power to refuse relief on the ground of mere delay (as where plaintiff claimed to have a drain passing through his land closed), where plaintiff establishes a right not affected by —.—24 W. R. 97.

244. In a suit for possession, where defendant admits tenancy and there is no finding to the contrary, the Court cannot regard his possession as adverse, and apply the law of — even if plaintiff has not had possession for 12 years.—24 W. R. 113.

245. Where plaintiff made over a Government promissory note to defendant for the purpose of drawing interest, but fraudulently kept it notwithstanding a promise (whereto plaintiff consented) to return it within a given time, which promise had not been fulfilled although repeated demands had been made, plaintiff's cause of action was held to accrue from the date of that promise.—24 W. R. 224.

246. The rights and interests of plaintiff's co-sharer having been sold under a decree, the purchaser possessed himself of plaintiff's share as well as of his own. *Held* in a suit to recover possession that plaintiff was not bound to bring his action within one year from the date of dispossession, but that he had a right to the — of 12 years.—24 W. R. 302.

247. In a suit for resumption of *lakheraj* land, in which defendants (*inter alia*) pleaded — alleging that they had been in possession more than 12 years without acknowledging plaintiff as landlord, both the Lower Courts decreed the claim holding that plaintiff's cause of action arose on the date of a resumption decree obtained by him against a third party,—*Held* that the decision was erroneous in law, as the resumption decree did not give plaintiff a cause of action against the present defendants, and that it was for him to show that his claim was not barred.—24 W. R. 389.

248. Where a plaintiff, who has obtained a decree for possession of immoveable property, undergoes the mere ceremony of receiving formal possession on the spot by beat of drum and posting of bamboos (as provided by s. 224 or s. 264 Act VIII), and then allows 12 years to elapse without taking any steps to acquire and assert actual possession, he loses the title conferred by the decree.—24 W. R. 418.

249. In ascertaining the amount of a judgment with a view to determining whether execution of the decree is barred by s. 58 Act VIII of 1869 (B. C.), the interest which accrues subsequently to the date of the decree is not to be included.—24 W. R. 442.

250. A joint decree against two defendants for a sum exceeding 500Rs. cannot be divided so as to fall within the scope of s. 58 Act VIII of 1869 (B. C.).—25 W. R. 55

251. A suit, which was one not for reversal of a sale alone, but for declaration of title and recovery of possession by setting aside the decree and the bond upon which it was based, is not barred by the — of one year.—25 W. R. 148.

252. Does not bar a suit brought to establish plaintiff's right to sell mortgaged property in satisfaction of the mortgage debt.—25 W. R. 189.

253. On an application for refund of money deposited as costs, which was alleged to be barred by —,—*Held* that as litigation was protracted between the parties for many years, and the question of liability for costs remained unsettled all that time, — would run, not from the date of the original order entitling applicant to refund, but from the date of the conclusion of the proceedings in the final appeal.—25 W. R. 309.

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Limitation (Act XIII of 1848).

1. The decision of a Collector under the Butwarra Law is not an award within the meaning of Act XIII.—W. R. F. B. 11 (1 Hay 92, Marshall 37).

2. Act XIII applies only to suits for contesting the justice of an award as between the contending parties, and not to suits for the purpose of amending a settlement and establishing the rights of persons who were not parties contesting between themselves before the Collector.—(F. B.) W. R. F. B. 128 (Sev. 831). *See also* Sev. 829.

3. A decision before the Survey authorities, not between two landholders whose estates adjoined, but between a superior and inferior holder of an estate, cannot be protected under Act XIII.—1 Hay 427.

4. The order of a Commissioner of Revenue striking an appeal off the file is not an award within the meaning of Act XIII.—1 Hay 555, 2 Hay 41.

5. Plaintiff having successfully defended a suit brought against him by defendant who had obtained an award of the Revenue authorities, was held not barred by — in now suing to set aside that award more than 3 years after it was passed.—2 Hay 50.

6. The rejection of a petition by a Survey Ameen, on account of plaintiff's default, is not an award within the meaning of Act XIII.—2 Hay 85.

7. The order of a Deputy Collector in the Survey Department striking off a case is not an award within the meaning of Act XIII.—2 Hay 400 (Marshall 323).

8. A plaintiff who sued within 3 years of the date on which his claim for a settlement was rejected by the Commissioner of Revenue on appeal from the Collector, was held to be within the limitation laid down in Act XIII.—L. R. 93.

9. M, in support of his claim for a settlement before the Revenue authorities, filed a deed of compromise under which plaintiff now claimed, and which purported to state that plaintiff and M were to share in the settlement. M's claim was contested by defendant and rejected by the settling officer. *Held* that this was an award to which plaintiff was a party, and that as his suit had not been brought within 3 years, it was barred by limitation under Act XIII of 1848.—Sev. 437.

10. In an order to apply —, there must be an award, *i.e.* an adjudication after a contention between the parties before the Survey authorities.—W. R. Sp. 30.

11. A suit substantially to vary the boundaries laid down in a Survey award, must be brought within 3 years from the date of the award.—W. R. Sp. 38.

12. Act XIII cannot be applied to bar a suit to assess land as rent-paying.—W. R. Sp. 60.

13. The order of a Deputy Collector under Reg. VII of 1822, declaring the lands in dispute to be *paykan jagheer* lands, is an award within the meaning of Act XIII and must be sought to be set aside within 3 years.—W. R. Sp. 140.

14. No deduction on account of minority or other legal disability is allowable under Act XIII.—W. R. Sp. 140, 5 W. R. 27.

15. Where a person appealed from a Collector's award under Act XIII, and his appeal having been struck off, he then sued to set aside the award, — was held to commence from the date of the award and not from the date of the order in the ineffectual appeal proceedings.—W. R. Sp. 378 (L. R. 151).

16. The rejection by a Survey Officer of a claim because it had not been brought forward sooner, is not an award within the meaning of Act XIII.—1 W. R. 114.

17. An award of the Survey authorities adopting an order under Act IV of 1840, is not illegal and consequently governed by —.—1 W. R. 120.

18. An order of a Superintendent of Survey striking off an appeal, is not an award within the meaning of Act XIII.—1 W. R. 328.

19. Act XIII does not bar a suit to set aside a Survey award to which the plaintiff was no party but is an auction-purchaser at a sale for arrears of revenue subsequent to the award.—3 W. R. 165.

20. A Collector's order rejecting a claim to alluvial land on the ground that a settlement has been concluded, is not an award within the meaning of Act XIII.—7 W. R. 42.

21. Act XIII operates in certain cases to give to a

LIMITATION (ACT XIII OF 1848) (*continued*).

Survey award the full effect of a decree of a Civil Court by taking away from the Courts the power of entertaining any suit for contesting the justice of such award after a limited time.—23 W. R. 173.

See Limitation 20.
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Limitation (Act X of 1859).

1. The words "time of passing of the Act" in Act X of 1859 must be reckoned from the date on which the Act received the Governor-General's assent, and not from the date on which it came into operation.—(F. B.) W. R. F. B. 126 (1 R. J. P. J. 112; Sev. 8a).

2. The words "passing of this Act" in s. 33 must be taken to mean the date when the Act received the Governor-General's assent, and not the date on which it came into operation.—2 Hay 510 (Marshall 410).

3. A suit under Act X of 1859 against the surety of an agent, is governed by the — prescribed by s. 30 and not s. 33.—*Ib.* *See also* 8 W. R. 159, 12 W. R. 116.

4. The time limited by s. 144 for suing in respect of distraint for rent, is to be reckoned, in the case of a suit for a wrongful distress afterwards abandoned, from the abandonment of the distress, and not merely from the date of the original seizure.—2 Hay 597 (Marshall 470), 3 W. R. (Act X) 139.

5. The words in s. 32 "after the passing of the Act" refer to the date when the Act was passed, and not the date on which it came into operation.—W. R. Sp. (Act X) 5 (Marshall 637; 2 R. J. P. J. 17). *See also* W. R. Sp. (Act X) 19.

6. A Putnee sale was after long litigation finally set aside on account of irregularity. *Held* that the time occupied in that proceeding could not be deducted in reckoning the period within which, under s. 32, an action could be brought for the original arrears.—3 R. J. P. J. 147, (*reversed by Privy Council*) 11 W. R., P. C., 5; and *see* 37, 38 *post*; 18 W. R. 8.

7. A suit brought within 3 years from the passing of Act X of 1859 for arrears of rent of 1266 to 1268 and three months of 1269, was held not barred by — under s. 32; the claim for the arrears of 1266, which were not due till 1267, being in time though that was a period preceding the passing of the Act.—W. R. Sp. (Act X) 69.

8. Where a zemindar distrains the crop of a piece of land, and two different parties each claim to be the tenant of it, neither of them is barred by the limitation laid down in s. 140, which only applies to the case of two rival zemindars claiming the rent of the same piece of land.—W. R. Sp. (Act X) 70.

9. The limitation under s. 32 does not admit of exceptions.—1 W. R. 100 (3 R. J. P. J. 188) 4 W. R. 142 (3 R. J. P. J. 221).

10. Suits under Act X of 1859 are governed by the rules of limitation therein mentioned.—1 W. R. 349.

11. The limitation under s. 77 is not applicable to a suit for possession of the whole estate brought after a claim against the tenants had been dismissed under that section. —2 W. R. 197.

12. The limitation prescribed by s. 28 applies only to suits brought under that section.—(F. B.) 2 W. R. 205 (4 R. J. P. J. 194).

13. A landlord, after having obtained a decree for enhancement against his tenant, sued him for arrears of rent. *Held* (with reference to ss. 30 and 32) that the suit might be brought within one year from the date of the final decree fixing the rent in the suit for enhancement or within three years from the end of the month of Jeyt of the Fusly or Willaity year for which such rent is claimed.—2 W. R. (Act X) 51 (4 R. J. P. J. 146). *See* 30 *post*.

14. An arrear of rent is not due within the meaning of s. 32 until the rent itself has been determined.—2 W. R. (Act X) 82.

15. Ss. 77 and 140 do not apply to a suit in a Civil Court for confirmation of possession of land regarding which plaintiffs had unsuccessfully sued before the Collector to establish that it was their own rent-free land.—2 W. R. (Act X) 95.

16. The fixing of the rate of rent in an execution proceeding of the Civil Court will not save —.—3 W. R. (Act X) 2.

17. Where a suit is pending to determine the rate of rent, back rent can be sued for only within one year of the determination of the rate.—*Ib.*

18. Will not take a fresh start from an action which, though partly declaratory, admitted of a decree for rent.—3 W. R. (Act X) 19 (4 R. J. P. J. 401). *See* 30 *post*.

19. How applied in a suit by a zemindar brought under s. 24 Act X for money improperly charged in agent's accounts.—3 W. R. (Act X) 121, 8 W. R. 159.

And how under s. 33.—9 W. R. 329, 11 W. R. 163, 12 W. R. 116, 21 W. R. 154.

20. Under s. 92 no process of execution can issue after the lapse of 3 years from the date of judgment for a sum not exceeding 500Rs.—3 W. R. (Act X) 131, 157; 4 W. R. (Act X) 27. *See also* 13 W. R. 295.

Unless a proper application for execution has been made within 3 years from such date.—6 W. R. (Act X) 84, (*affirmed by F. B.*) 13 W. R. F. B. 3.

So held also under s. 58 Act VIII of 1869 (B. C.).—20 W. R. 395; 24 W. R. 16.

21. The time allowed to contest a decision under s. 77 is one year from the date of the Collector's decision and not from that of the Judge in appeal, although the Collector's decision may have been favorable and the Judge's adverse to the plaintiff.—3 W. R. (Act X) 155. (*Over-ruled by F. B.*) *See* 5 W. R. (Act X) 23.

22. The limitation under the same section for a suit in the Civil Court to try the question of title, counts from the date of the decision of the Collector in appeal.—4 W. R. (Act X) 21; (*affirmed by F. B.*) *see* 5 W. R. (Act X) 23.

23. In computing the limitation under the same section, the date of the decision must be excluded.—4 W. R. (Act X) 30. *See* 16 W. R., O. J., 1.

24. The dismissal of a former suit to contest a notice of enhancement on the ground of protection as a mokurrureedar holding under a pottah, is sufficient to take the present suit for arrears of rent at the enhanced rate out of the operation of the proviso in s. 32.—5 W. R. (Act X) 51.

25. Limitation under s. 77 only bars a suit within the competency of Revenue Courts to decide, but not suits on matters of general proprietary title.—5 W. R. (Act X) 85, 87, 92; 7 W. R. 152; 8 W. R. 294; 25 W. R. 65, 481, 550. *See also* 14 W. R. 454.

26. The mere absconding of an agent on a certain date is not such a determination of the agency as to cause limitation to run from that date, if the agency be one for a fixed period.—6 W. R. (Act X) 29.

27. How applied where a party who had unsuccessfully intervened in a suit for rent sues for possession.—6 W. R. (Act X) 38.

28. How applied under s. 30 in a suit for arrears of rent of a talook which, by a decision of the High Court, was taken out of the class of those protected by s. 51 Reg. VIII of 1793 and declared liable to enhancement.—6 W. R. (Act X) 42.

29. S. 32 does not authorize the recovery of only 3 years' rent.—6 W. R. (Act X) 63.

30. In a suit for arrears of rent at enhanced rates commenced within one year after the decree of a Civil Court declaring plaintiff's right to enhance and more than three years after the end of the last year in respect of which any portion of the rent sued for was claimed, the non-payment of the enhanced rent and not the declaratory decree was the cause of action; and the suit is governed by s. 32 and not s. 30.—(F. B.) 6 W. R. (Act X) 77. *But see* 7 W. R. 405.

31. The limitation of 6 months prescribed by s. 6 Act VI of 1862 (B. C.) applies to deposits made under s. 5 after rents have become due, and does not interfere with the limitation for suits for enhanced rent under s. 32 Act X.—6 W. R. (Act X) 98, 8 W. R. 353.

32. The word "Collector," as used in the proviso of s. 140 Act X, means the Collector or Deputy Collector who makes the final decision from which limitation will begin to run.—6 W. R. (Act X) 102.

33. The limitation prescribed by s. 30 applies only to suits instituted under this Act.—7 W. R. 243.

34. Where defendant failed in a contract to plant 2000 beetle-nut trees within 5 years of date of lease, plaintiff's cause of action is not an annually recurring one, but accrues

LIMITATION (ACT X of 1859) (*continued*).

at the expiration of the 5 years, and he is bound under s. 30 to sue for cancelment of lease within one year from that date.—11 W. R. 452.

35. The limitation of 3 years for a suit to recover arrears of rent must, under s. 32, reckon, not from the date of instalments, but from the last day of the year in which the arrear becomes due.—11 W. R. 537. *See also* 15 W. R. 523.

36. The limitation specified in Act X has reference exclusively to suits brought and determined under that Act, and not to suits to enforce liabilities arising out of equities as against parties who were not the ostensible tenants.—13 W. R. 390, 16 W. R. 61. *See* 19 W. R. 317.

37. Where limitation is pleaded in a suit for arrears of rent, deduction must be allowed to the landlord for the time he was suing to eject defendants as trespassers.—16 W. R. 79, 19 W. R. 18. *See next case.*

38. During the period that litigation is going on under cl. 5 s. 23 and s. 78 Act X for ejectment and arrears of rent, the defendant's tenancy and obligation to pay rent are in suspense; but by payment of rent under the latter section, a continuance of the tenancy is effected, the obligation to pay rent again arises, and the — under s. 32 then begins to run.—17 W. R. 415.

39. The right of suit of a claimant under s. 107 is not subject to the year's limitation therein mentioned, unless his claim has been duly heard in the manner prescribed by the section.—24 W. R. 260.

See Enhancement 45.
Jurisdiction 254.
Limitation 25, 26, 109.
,, (Act XIV of 1859) 14, 28, 29, 30, 41, 57, 108.
Principal and Agent 10.
Rent 28.

Limitation (Act XIV of 1859).

1. A suit to recover personal property (*e.g.* crop of indigo plant) carried away and appropriated, or for the value of such property, is not a suit for damages for injury to personal property within the meaning of cl. 2 s. 1, but is governed by cl. 16.—(F. B.) W. R. F. B. 126 (S. C. C. 54, Sev. 114*c*). *See also* 5 W. R. 50, 17 W. R. 277.

2. In a suit for mesne profits, under cl. 16 s. 1.—(F. B.) W. R. F. B. 163 (L. R. 1). *See also* 6 W. R. 130.

3. A payment of interest upon a bond does not take the debt out of the operation of the Statute.—S. C. C. 40.

4. The limitation of 3 years applies only where the written engagement is not registered within 6 months.—*Ib.*

5. A writing on the back of a bond acknowledging the debt, is an acknowledgment within the meaning of s. 4.—*Ib.*

6. A suit for balance of money lent with interest does not come under s. 8, but under cl. 9 s. 1; and a payment on account does not keep alive the claim if 3 years from the time when the debt *became due* have elapsed, unless there is a written engagement signed by the party engaging to be bound thereby.—S. C. C. 92: 4 W. R., S. C. C., 1. *See* 75 *post.*

7. The time of limitation runs from the period when the contract was broken and not from the time that knowledge of the breach of contract first came to plaintiff, whether the breach of contract was patent and discoverable, or concealed and undiscoverable. Thus, where a lessee cut trees contrary to the provisions of his first lease and the lease was renewed, limitation was held to run from the breach of contract, and not from the lessee's knowledge of it.—3 W. R., S. C. C., 9 (S. C. C. 106).

8. Property being attached under a decree before Act VIII of 1859, a third party claimed to be entitled as against the judgment-creditor, under a bill of sale. The Judge enquired into his claim, found that the assignment was fraudulent and ordered that the property should be sold under the decree. *Held* that the order of the Judge was a summary decision of a Civil Court within cl. 5 s. 1, and that a suit by the claimant for the recovery of the property instituted after the expiration of a year from the date of the order was barred by the clause.—Marshall 520. *But see* 6 W. R. 21.

9. Cl. 5 s. 1 applies to the grant of a certificate under Act XXVII of 1860, and also to an order passed under Act XIX of 1841 refusing to put a person in possession of property as a *mohunt*.—2 Hay 633 (Marshall 573).

10. Suits pending or instituted in Assam before 11th July 1862 are not affected by Act XIV of 1859.—1 R. J. P. J. 102 (Sev. 68).

11. The provisions of s. 14 (allowing a deduction for pendency of suit in wrong Court) do not apply to a suit under Act X of 1859.—W. R. Sp. (Act X) 13 (2 R. J. P. J. 85), 2 W. R. (Act X) 96, 5 W. R. (Act X) 44. *See also* 9 W. R. 570.

12. A suit brought under Reg. II of 1819 was held barred by cl. 14 s. 1.—L. R. 159.

13. Money paid by a co-sharer in excess of his own liability under a joint lease, is money paid for the use of his co-lessee, and not money lent. Cl. 16, and not cl. 9 s. 1, applies to such a case.—L. R. 165.

14. S. 14 does not apply to suits to which s. 30 Act X is applicable.—Sev. 103.

15. Periods computed from the passing of the Act are computed from 5th May 1859, although the Act came into operation at a subsequent date.—Sev. 699.

16. S. 7 applies to a case where plaintiff is one of the parties to a final order in an Act IV of 1840 case, where he not only did not aver dispossession under that order, but denied any and all dispossession.—Sev. 836.

17. The admission to a third party in writing that a sum is due, is not such an acknowledgment of a debt under s. 4, as to remove such debt out of the Statute.—2 Hyde 14. *See contra* 3 W. R., S. C. C., 6 (S. C. C. 134).

18. Cl. 13 s. 1 applies to suits for the recovery of maintenance, whether the right to receive maintenance arises out of the general law, or out of a specific deed granting such maintenance.—W. R. Sp. 13. *See also* 31 W. R. 354.

19. Under Act XIV a suit for mesne profits may be brought within 12 years from the date on which a decree for possession was passed.—W. R. Sp. 79.

20. According to cl. 14 s. 1, a suit by a dur-putneedar, who purchased at a sale under Reg. VIII of 1819, to resume an alleged invalid lakheraj tenure, must be brought, not within 12 years from the date of his purchase, but within 12 years from the date when the right to sue accrued to the person under whom he claims.—W. R. Sp. 170, 15 W. R. 436, 23 W. R. 24.

21. Where a suit to recover property comprised in an Act IV of 1840 order was originally instituted, through fraudulent under-valuation of claim, in a Sudder Ameen's Court before Act XIV came into force, but the plaint having been returned was subsequently filed in a Principal Sudder Ameen's Court after that Act came into force, the suit was held governed by cl. 7 s. 1.—W. R. Sp. 280 (L. R. 62).

22. No other cause of disqualification, than those mentioned in Act XIV, can save limitation.—W. R. Sp. 290.

23. The object of s. 11 is merely that no limitation will apply to a case in which the person suing was disqualified when the cause of action arose, though the suit might be brought after the ordinary period, provided it is within 3 years after the disqualification ceased.—W. R. Sp. 302.

24. Cl. 2 s. 1 does not apply to a suit for damages for the total and illegal appropriation of property.—W. R. Sp. 322 (L. R. 98).

25. In a suit for a share in joint family property, the Court should ascertain whether plaintiff has received anything within 12 years or within what time. If he has, or is otherwise shown to have been in joint possession, cl. 13 s. 1 will apply.—W. R. Sp. 349 (L. R. 125); 11 W. R. 73, 132; 15 W. R. 400; 17 W. R. 451.

26. That defendants by means of collusion with others obtained possession of the property in dispute originally by unfair means and therefore held it fraudulently, is not the kind of fraud provided for by s. 9.—W. R. Sp. 364.

27. How applied under s. 14 where an unsuccessful claimant, after consuming time by bringing an illegal appeal (which is subsequently thrown out) brings a regular suit to establish his right as provided by s. 246 Act VIII of 1859.—W. R. Sp. 371 (L. R. 144).

28. S. 14 is not applicable to suits barred by limitation under Act X of 1859, which are expressly excepted from the operation of Act XIV by s. 3.—W. R. Sp. (Act X) 118 (3 R. J. P. J. 102).

LIMITATION (ACT XIV OF 1859) (*continued*).

29. In cases where the special rules of limitation prescribed by Act X apply, the provisions of Act XIV have no application.—W. R. Sp. (Act X) 116, 133 (3 R. J. P. J. 123), 1 W. R. 131 (3 R. J. P. J. 219), 3 W. R. (Act X) 5.

30. In a suit governed by the limitation prescribed by s. 32 Act X, a plaintiff is entitled to no deduction under s. 14 Act XIV for pendency of suit in a Court without jurisdiction.—W. R. Sp. (Act X) 120 (3 R. J. P. J. 111), 1 W. R. 67. *See also* 16 W. R. 61.

31. S. 2 Act XI of 1861 does not give a fresh starting-point, but simply restricts the operation of s. 20 Act XIV until 1st January 1862.—W. R. Sp., Mis., 6; 3 W. R., S. C. C., 8 (S. C. C. 138); 4 W. R., Mis., 24; 6 W. R., Mis., 30.

32. Where the last application to execute a decree was made in November 1862, it was held that the case must be disposed of under Act XIV.—W. R. Sp., Mis., 6.

33. According to s. 21, the application for execution must be made within 3 years from the passing of the Act and not from its coming into operation, Act XI of 1861 notwithstanding.—W. R. Sp., Mis., 27; 2 W. R., Mis., 17; 3 W. R., Mis., 2; 4 W. R., Mis., 13; 6 W. R., Mis., 104.

34. S. 11 not applicable to persons who had attained their majority before the passing of the Act.—1 W. R. 52.

35. Only 6 years' mesne profits are recoverable under cl. 16 s. 1, mesne profits not being included within the words "any interest in immoveable property" in cl. 12.—1 W. R. 65, 83; 3 W. R. 13; 5 W. R. 219; 6 W. R. 78, 129.

36. Attestation before a Cazee is not registration within the meaning of cl. 10 s. 1, and consequently a suit under a lease attested before a Cazee is subject to the limitation of 3 years prescribed by that clause.—1 W. R. 89.

37. Cl. 10 s. 1 applies to a suit upon an instalment-bond, the limitation commencing from the date of the last unsatisfied payment.—1 W. R. 121.

38. No deduction can be allowed under s. 14 for litigation against a wrong party.—*Ib.*

39. A suit for possession against an agent or deputy in charge of endowed property is not barred by s. 2.—1 W. R. 126.

40. The zemindar's right of resumption, when lost under cl. 14 s. 1, cannot be revived by a putneedar deriving his title from and claiming under the zemindar.—1 W. R. 197.

41. No deduction under Act XIV can be allowed in a suit brought under s. 33 Act X more than 7 years after the determination of defendant's agency, where no fraud is pleaded by plaintiff.—1 W. R. 265.

42. A suit for household articles or goods supplied by retail by an ordinary trader, is governed by cl. 8 s. 1.—1 W. R. 308, 7 W. R. 101. *See* 11 W. R. 529.

43. In a suit to recover mesne profits in the shape of rent due on a *putnee mehal*, the period of pendency not only of a former suit for rent of the same *putnee* for the same year, but also of a former suit for possession of the *putnee*, was allowed to be deducted under s. 14.—1 W. R. 310. *See also* (P. C.) 20 W. R. 380.

44. Cl. 5 s. 1 does not apply to an order under Act XIX of 1841.—1 W. R. 341.

45. Execution should be sued out within 3 years from the passing of Act XIV, and not from the date of the Act coming into operation.—1 W. R., Mis., 9; 2 W. R., Mis., 1.

46. Deduction under s. 14 is only claimable where the Court before which the former suit was brought had no jurisdiction and where there has been no adjudication.—2 W. R. 9, *ib.*, Mis., 1. *See* 7 W. R. 160, 9 W. R. 155, 15 W. R. 69.

And where the Court finds that the suit was prosecuted *bonâ fide* and with due diligence.—17 W. R. 518.

47. Cl. 3 s. 1 applies to a suit brought against a person who has obtained possession of immoveable property by delivery under s. 264 Act VIII of 1859.—2 W. R. 55, 4 W. R. 42. *See also* 5 W. R. 123. *See* 20 W. R. 165.

48. Cl. 16 s. 1 applies to a suit for damages against a servant misappropriating money entrusted to him for a particular purpose.—2 W. R. 122.

49. Claims to *malikhana* are not barred by — if brought within 30 years, the Collector being a depositary within the meaning of cl. 15 s. 1.—2 W. R. 162 (4 R. J. P. J. 145). *See* 19 W. R. 94.

50. A suit for damages to recover the value of personal property plundered, and other consequential damages, is governed by cl. 16 s. 1.—2 W. R. 235.

51. *Quære.* Whether s. 15 applies to a case where a Deputy Collector, acting as agent for a minor, uses his powers of resumption in unlawfully dispossessing the previous holder.—2 W. R. 249.

52. Rules for disposing of resumption suits before the date on which Act XIV came into operation. In suits instituted after that date, the effect of cl. 14 s. 1 should be taken into consideration.—2 W. R. 258 (4 R. J. P. J. 200). *See also* 6 W. R. 58.

53. Cl. 16 s. 1 is applicable to a suit for reimbursement of rateable shares of a joint decree.—2 W. R. 266.

54. Cl. 3 s. 1 did not prevent a reversioner from questioning the validity of an execution-sale after the expiry of one year, where the widow was dead.—1 W. R. 145.

55. But it would prevent a reversioner from questioning the validity of the sale during the widow's lifetime.—2 W. R. 271. *See* (F. B.) 9 W. R. 460, 505; 10 W. R. 30.

56. Object of s. 11 with regard to minors.—2 W. R. 305; 3 W. R. 21, 184; 5 W. R. 204, 219; *ib.* (Act X) 41; 6 W. R. 20; 7 W. R. 3; 10 W. R. 44, 285; 14 W. R. 339, 429; (P. C.) 25 W. R. 285.

57. Suits for arrears of rent under Act X of 1859 are not affected by Act XIV of 1859; the time given by s. 32 Act X was not reduced by cl. 8 s. 1 Act XIV; the ground being that the two Acts were separate Acts as far as limitation was concerned and that the limitation clauses of Act X were not affected by Act XIV.—(F. B.) 2 W. R. (Act X) 21 (1 R. J. P. J. 52); 5 W. R. (Act X) 41, and (*affirmed by P. C.*) 19 W. R. 5. *But see* 18 W. R. 8, 59.

So also as to s. 29 Act VIII of 1869 (B. C.).—23 W. R. 152.

58. Meaning of "rent free" in cl. 14 s. 1.—2 W. R. (Act X) 33 (3 R. J. P. J. 108).

59. Where application for revival of execution was made to the Principal Sudder Ameen in January 1862, and the Judge's permission for the Principal Sudder Ameen to try the case was asked for and obtained in June 1864, the Judge's sanction legalized all the previous acts of the Principal Sudder Ameen.—2 W. R., Mis., 2; (*affirmed by P. C.*) 18 W. R. 319.

60. In what cases a decree was held capable, and in what cases not capable, of being enforced or kept alive by means of subsequent proceedings within the meaning of s. 20.—2 W. R., Mis., 3, 10; 3 W. R., Mis., 2; 4 W. R., Mis., 1, 6, 21, 24; 5 W. R., Mis., 5 (2 cases), 11, 15, 16, 19, 20 (2 cases), 23, 40, 43, 45; 6 W. R., Mis., 14, 25, 34, 37, 38, 43, 44, 48, 49, 59, 60, 63 (3 cases), 74, 76, (F. B.) 98; 7 W. R. 9, 10, 79, (F. B.) 521; 8 W. R. 63, 80, 98, 99, 100, 199, 268, 274, 306, 320, 359; 9 W. R. 100, 240, 388, 443, 485, 527, 565, 590; 10 W. R. F. B. 8; 10 W. R. 95, 127, 224, 229, 240, 248, 337, 346, 428; 11 W. R. 8, 70, 80, 117, 205, 209, 210, 269, 329, 343, 421, 567, 570; 12 W. R. 129, 281, 357, 436; 13 W. R. F. B. 44; 13 W. R. 40, 83, 128, 141, 164, 208, 244, 309, 315; 14 W. R., P. C., 21; 14 W. R. 112, 288, 483; 15 W. R. 51, 127, 162, 182, 203, 207, 356, 449, 473, 514, 530; 16 W. R. 29, 266, 267, 299; 17 W. R. 67, 72, 99, 355, 389, 396; 18 W. R. 7 (2 cases), (P. C.) 76, 192, 254, 464, 513; (F. B.) 19 W. R. 30, 102, 226, 255, 301, 417; 20 W. R. 286; (P. C.) 21 W. R. 97, 188, 212, 244, 418; 22 W. R. 328; 24 W. R. 339; 25 W. R. 310.

61. S. 20 how applied to the execution of a decree dated the 30th December 1861.—2 W. R., Mis., 43.

62. Mortgager's written acknowledgment to a third party of mortgagee's right or title is sufficient within the meaning of cl. 15 s. 1.—3 W. R. 3.

63. Under s. 11 a minor may sue, within a year of his majority, to set aside an order passed under s. 246 Act VIII rejecting a "well-wisher's" application to stop a sale of certain lands attached in execution during his minority.—3 W. R. 8.

Ss. 11 and 12 Act XIV apply to s. 246 Act VIII.—14 W. R. 339; (*approved by P. C.*) 25 W. R. 285.

A minor plaintiff was held to be under disability within the meaning of ss. 11 and 12, although he had a guardian who might have brought the suit.—*Ib.*

But he cannot have the benefit of these sections (*i.e.* to bring a suit by his guardian after the expiration of the year) whilst the disability continues.—14 W. R. 339; (*overruled by P. C.*) 25 W. R. 285.

64. In a suit for mesne profits, Act XIV allows no deduction for the pendency of the suit for possession.—3 W. R. 13; 6 W. R. 113.

65. Cl. 14 s. 1 applies to all suits to resume or assess

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lands held rent-free, whether before or after the Permanent Settlement.—3 W. R. 33 (4 R. J. P. J. 394).

66. Under Act XIV, mesne profits can be decreed only for 6 years before institution of suit. The cause of action for the mesne profits is the date on which they became annually due.—3 W. R. 38; 6 W. R. 113; 7 W. R. 161, 173. *See* 14 W. R. 82, 17 W. R. 209.

67. Under cl. 16 s. 1, the date of dispossession is the date when the cause of action arises in suits for mesne profits.—3 W. R. 68.

68. Cl. 15 s. 1 applies where there is some relation of trust, whether the property is given in mortgage or pawn or simply deposited for safe custody.—3 W. R. 94.

69. Deduction was allowed under s. 14 of time of pendency of a former suit which was dismissed as not brought in form.—3 W. R. 101.

70. Cl. 16 s. 1 governs a suit for contribution by a person who became surety for re-payment of advances received by him and the defendant from Government for manufacturing salt, and was obliged, in execution of a decree against him, to pay the whole sum advanced.—3 W. R. 134.

71. A person can sue for the profits of a property from which he has been dispossessed without being obliged to sue for possession. The limitation prescribed by cl. 12 s. 1 applies to such a suit.—3 W. R. 147.

72. A suit to recover property respecting which no final award has been passed under Act IV of 1840 is not barred by limitation under cl. 7 s. 1, but may be brought within 12 years from date of ouster.—3 W. R. 174. *See* 11 W. R. 177.

73. A purchaser at a private sale cannot count — from the date of his purchase, but from the date of accrual of the original vendor's title.—3 W. R. 176.

74. How reckoned in a case in which two sisters, not being heirs, took possession of ancestral property as heirs on the death of their mother, but subsequently quarrelled, one of them adopting a son and executing a deed of gift in his favor; suit being brought for the recovery of such portion as had passed into the possession of the adopted son.—3 W. R. 194.

75. Cl. 9 s. 1 and not s. 8 is applicable to a suit for balance of account and fresh advance made for the cultivation of indigo, where defendant fails to perform his part of the contract.—3 W. R., S. C. C., 1 (S. C. C. 121). *See* 3 W. R., S. C. C., 13 (S. C. C. 145), 9 W. R. 209, 10 W. R. 293.

76. A suit to recover consideration money of dur-putnee cancelled by sale of putnee for arrears of rent is governed by —, and not cl. 5 s. 17 Reg. VIII of 1819 which refers only to the disposal of the sale proceeds of a putnee sale.—3 W. R., S. C. C., 2 (S. C. C. 123).

77. A suit is barred by — when the time for its institution expires on a Sunday, holiday, or *dies non*.—(F. B.) 3 W. R., S. C. C., 5 (S. C. C. 131). *See also* 3 W. R. 209, 46; 6 W. R. 40; 16 W. R., O. J., 1; 16 W. R. 230.

So also as regards execution cases.—13 W. R. 122.

Unless the Court has been unexpectedly and unauthorizedly closed and appellant can prove that he was ready. —8 W. R. 73.

78. Goods supplied to a dealer for the purpose of retail-sale by him are not "articles sold by retail" within the meaning of cl. 8 s. 1.—3 W. R., S. C. C., 24 (S. C. C. 170) 8 W. R. 4. *See* 14 W. R. 181.

79. In a suit brought, after Act XIV came into operation, to resume or assess invalid lakheraj created subsequent to 1790, the *nullum tempus* clause of s. 10 Reg. XIX of 1793 is not applicable, but either cl. 14 or cl. 12 of s. 1 Act XIV will apply.—4 W. R. 53.

80. Cl. 2 s. 1 refers only to suits for personal property, but not to a suit for compensation for injury to land resulting in the loss of crops.—4 W. R. 76.

81. Cl. 13 s. 1 does not apply to a suit for maintenance when the right to receive such maintenance is not a charge on the estate of a deceased person but on the estate of living persons.—4 W. R. 84.

82. A suit by the holder of a hoondee against the acceptor is governed by cl. 16 and not cl. 10 s. 1.—4 W. R. 98. *See* 14 W. R. 184.

83. In computing — under cl. 6 s. 1, the day on which the award was passed should be excluded.—4 W. R. 105. *See* 16 W. R., O. J., 1.

84. A decree passed under Act XIX of 1841 on a claim to a certain share of property by right of succession, is a summary order and therefore subject to s. 22 Act XIV.—4 W. R., Mis., 6.

85. When a party, admitting his liability for an ancestor's judgment-debt, settles a suit in Court brought against him for the recovery of that sum by entering into a written contract by which he engages to pay the debt by instalments, limitation cannot be applied to prevent execution being taken out within 3 years from the date when the suit was thus disposed of, because, previous to such written contract, the decree-holder was in laches.—4 W. R., Mis., 10.

86. S. 19 applies only to Courts in India established by Royal Charter, and not to the Privy Council, the execution of whose decrees is subject to the limitation prescribed by s. 20.—4 W. R., Mis., 10. *See* 134, 137 *post*.

87. S. 14 does not apply to a case of execution of decree. —4 W. R., Mis., 18; 7 W. R. 327. (*Over-ruled*) *see* 203 *post*.

88. Where a decree-holder was not under a legal disability when his right accrued, his son claiming through him was not allowed extra time under s. 11, although he was under a legal disability (*i.e.* a minor) at the time of his father's death.—4 W. R., Mis., 21.

89. Where an indigo planter and a ryot contract, the former to make advances of money or seed for the cultivation of indigo plant, and the latter to deliver the indigo plant grown, a mere verbal admission by the ryot of the correctness of an account containing cross-items due, without a written acknowledgment (as under s. 4) from him that the balance is due, does not operate to create or renew any liability with reference to the law of limitation.— 4 W. R., S. C. C., 1, 10 W. R. 293.

90. A suit to recover deductions made on account of revenue by the Collector from a deposit made by a sharer of a joint estate in order to protect his share from sale by reason of the default of his co-sharer, is governed by cl. 16 s. 1.—4 W. R., S. C. C., 9.

91. A suit by a principal against an agent to recover money received by the latter during his agency and not accounted for, is governed by cl. 16 s. 1.—4 W. R., S. C. C., 15.

92. In case of fraud, limitation will run (according to s. 9) from the time of knowledge or means of knowledge of the fraud.—*Ib.* *See also* 6 W. R. 165, 10 W. R. 101.

93. Under s. 11 an adopted son out of possession should sue within 3 years of his majority to set aside illegal acts of his adopting mother done 12 years before the suit.— 5 W. R. 32, 295.

94. No deduction allowed to an adopted son for the period of pendency of suits brought by or against him to prove or disprove the validity of his adoption.—*Ib.*

95. An indorsement without signature is not a written engagement which can be registered under cl. 10 s. 1.— 5 W. R. 45.

96. *Quære.* As to what is a payment under protest within the meaning of cl. 4 s. 1.—5 W. R. 47.

97. No deduction under s. 11 for minority of sons claiming as representatives of their father.—5 W. R. 169.

98. Where the guardian of certain minors had obtained a decree on their behalf and then sold it to a third party *benamee* for the defendant in that suit, and the minors on coming to age sued to set aside the sale as fraudulent and void, considering the fraudulent nature of the whole transaction, and reading s. 20 along with ss. 9, 10, 11, and 12, it was held that execution of the old decree might issue even although more than three years had elapsed.— 5 W. R. 173. *See also* 6 W. R. 321. *See* 16 W. R., P. C., 22.

99. Cannot be applied to the assignee of a decree passed in 1857, suing out execution within 3 years from the passing of Act XIV.—5 W. R. 223.

100. Only *bonâ fide* purchasers from trustees are entitled to the benefit of s. 5.—5 W. R. 238. *See* 11 W. R. 13, 36.

101. S. 2 applies to the case of a suit against the purchaser from a trustee who is not a *bonâ fide* purchaser although he is himself a trustee in law.—*Ib.*

102. Cl. 13 s. 1 applies to Mahomedan as well as Hindoo families.—*Ib.* *See also* 11 W. R. 45. *But see* 20 W. R. 270.

103. By *bonâ fide* purchasers s. 5 does not necessarily mean a *bonâ fide* purchaser without notice, but an honest purchaser without actual fraud; and thus the defendants in this case, who were purchasers from a mortgagee for valuable consideration of an estate with a doubtful title, were held, as *bonâ fide* purchasers, protected by s. 5, and entitled to plead, in a suit brought for the redemption of the mort-

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gaged estate, the ordinary limitation of 12 years from the date of their purchase.—5 W. R. 253. *See also* 8 W. R. 476, 11 W. R. 36. (*Over-ruled by P. C.*) 15 W. R., P. C., 24; (P. C.) 23 W. R. 99.

104. A suit for damages for breach of contract for 2 years must, under cl. 10 s. 1, be brought within 3 years from the time when the breach of contract first took place.—5 W. R. 277, 7 W. R. 400.

105. A suit for damages to the extent of the injury sustained, brought under s. 3 Act X of 1836 against a party for prevailing upon ryots who had contracted to sow indigo, to break that contract, is governed by cl. 16 s. 1.—*Ib.* *See also* 8 W. R. 257.

106. S. 14 does not apply to a former suit brought, not against the same defendants as in the present suit, but against only one of them.—5 W. R. 281.

107. A suit for pleader's fees is governed by cl. 9 s. 1.—5 W. R. 297 (S. C. C. 1).

108. S. 11 cannot be used for the purpose of altering the limitation prescribed by Act X with regard to rents.—5 W. R. (Act X) 41.

109. S. 11 applies to suits and not to processes in execution of a decree.—5 W. R., Mis., 10; 6 W. R., Mis., 37; 8 W. R. 137; 20 W. R. 53.

110. An order striking off a case is not a proceeding under s. 20 to enforce or keep alive a decree.—5 W. R., Mis., 16; 6 W. R., Mis., 60, 63, (F. B.) 98; 8 W. R. 320; 10 W. R. 229; 11 W. R. 70. *See* 11 W. R. 567. *But see* 14 W. R., P. C., 21; 18 W. R. 7.

111. On the first application to execute, after the passing of Act XIV, a decree in force at the time of the passing of that Act, s. 21 applies; but on the next and subsequent applications, the rule contained in s. 20 is to be followed.—5 W. R., Mis., 17; 6 W. R., Mis., 14. 39.

112. Proceedings in execution of a decree as to mesne profits held to be an effectual proceeding under s. 20 to keep alive the same decree as to costs.—5 W. R., Mis., 40.

113. The filing of an application for review cannot stop operation of s. 20; nor will the order rejecting a review give a new commencement to the running of the period of limitation.—5 W. R., Mis., 45.

114. A suit for servants' wages is governed by cl. 2 s. 1.—5 W. R., S. C. C., 3.

115. Servants' wages are a debt which may be revived, under s. 4, by an admission, the new period of limitation being computed, according to the nature of the original liability, from the date of such admission. An admission which does not specify a particular amount to be due does not extend the period of limitation.—*Ib.*

116. The time spent *bonâ fide* in prosecuting an appeal, as well as that spent in prosecuting the suit, must be deducted under s. 14.—5 W. R., S. C. C., 8, (P. C.) 20 W. R. 380.

117. Mesne profits for more than 6 years may be given in a suit for possession and mesne profits brought by the guardian of a minor.—6 W. R. 19, 7 W. R. 161. *See* 17 W. R. 419.

118. A suit for damages for breach of contract in not giving a valid title to a sharer of property which defendant had agreed to sell him, is governed by cl. 9 or 10 s. 1.—6 W. R. 49.

119. How applied under cl. 1 s. 1 in a suit for pre-emption.—W. R. Sp. 117. 2 W. R. 5, 3 W. R. 225, 6 W. R. 131, 7 W. R. 195, 8 W. R. 383.

Also under s. 9.—22 W. R. 479.

And under s. 11.—7 W. R. 279.

120. Under Act XIV, whether the defendant raises the plea of — or not, it is incumbent on the Court to see that it has jurisdiction, and if that jurisdiction has lapsed by efflux of time, to refuse to exercise a jurisdiction which it has not by law.—6 W. R. 132.

121. A party having a lien on certain immoveable property as security for a loan, must obtain a decree both for the money and for the realization of it by the sale of the property within 6 years or 3 years from the date on which the money became due, according as the bond was or was not registered.—*Ib.* *See also* 6 W. R. 318, 7 W. R. 327, and 183 *post.*

122. Though malikhana is not, like rent, a recurring cause of action, yet a suit will lie for malikhana the cause of action as to which is non-payment within 6 years.—6 W. R. 151. (*Over-ruled*) *see* 158 *post.*

123. Under cl. 12 s. 1 limitation runs against a mortgagee, who is empowered by his mortgage to take possession on default of payment, from the date of such default; no new cause of action arises upon foreclosure.—6 W. R. 183, 22 W. R. 90.

124. According to s. 14, a plaintiff is not entitled to deduct the time occupied by him in prosecuting a former suit in which he was non-suited, nor the time occupied in appealing from that decision, nor the time intervening between the non-suit and the filing of the appeal.—(F. B.) 6 W. R. 184. *See* 7 W. R. 160.

125. So long as the relation of landlord and tenant lasts, no limitation runs against the landlord under cl. 12 s. 1, because there is no cause of action.—6 W. R. 215, 8 W. R. 55.

126. Cl. 3 s. 1 applies only to suits to set aside sales on account of irregularity and the like, but not to suits to set aside fraudulent deeds under color of which a sale was made.—6 W. R. 305.

127. Where a suit is dismissed for want of jurisdiction, and the order of dismissal is affirmed in appeal, and a suit is afterwards brought in the right Court, the period which elapsed between the decision of the first Court and the disposal of the appeal should be deducted under s. 14.—6 W. R. 308.

128. A suit to recover the balance of a partnership account is governed by cl. 9 s. 1.—6 W. R. 328.

129. Proceedings taken in execution of decree under either s. 20 or 21, are without authority of law unless taken within the time allowed by law.—6 W. R., Mis., 17.

130. Act XIV contains no provision by which the execution of a decree is bound by limitation on account of minority or other legal disability.—6 W. R., Mis., 37.

131. Act XI of 1861 only declares that certain sections of Act XIV should not take effect before 1st January 1862, but did not defer the operation of the Act in every case which might thereafter come before the Courts.—6 W. R., Mis., 41.

132. An attempt at settlement of accounts in Court is sufficient to keep a decree alive.—6 W. R., Mis., 43.

133. A decree must be kept alive as against a surety by proceedings irrespective of those taken against the judgment-debtors.—6 W. R., Mis., 44.

134. The right to enforce decrees of the Privy Council is not affected by Act XIV or any Law of Limitation.—(F. B.) 6 W. R., Mis., 69. *But see* (P. C.) 17 W. R. 292.

135. Where a decree passed before 1859 authorized the judgment-debtor to pay by instalments extending over a period of 13 years, and no proceedings in execution were taken within the time prescribed by ss. 20 and 21, the execution was held barred by limitation even as to those instalments which were within time.—6 W. R., Mis., 92. *See* 11 W. R. 570.

136. The execution of decrees of the High Court are governed as to — by s. 19 and not s. 20 or s. 22.—6 W. R., Mis., 94; 8 W. R. 267. *See* 283 *post.*

137. Where a decree passed by the late Sudder Court in 1859 was appealed to the Privy Council, and the decree-holder neither appealed to the Sudder Court or the High Court to take out execution, nor appeared before the Privy Council by whom the appeal was struck off for default,—*Held* that the execution of the decree was barred by — under s. 20, no proceeding having been taken to execute it within 3 years; and that in such a case the word "judgment" in that section did not mean the final judgment.—6 W. R., Mis., 95.

137*a*. The words "some proceeding" in s. 20 include all acts done either by the Court or by an officer of the Court, or *bonâ fide* by the applicant for enforcing the decree or keeping it in force.—(F. B.) 6 W. R., Mis., 98; 14 W. R., P. C., 21; 20 W. R. 31. *But see* 22 W. R. 154.

138. A suit by a mookhtar for salary is not governed by cl. 2 s. 1; but if plaintiff was engaged upon a distinct contract that he would be paid a fixed monthly salary, cl. 9 would probably apply.—6 W. R., C. R., 11.

Nor is a mohurair a "servant" within the meaning of cl. 2 s. 1.—13 W. R. 150.

139. Where a servant is appointed on a fixed monthly salary and there is nothing to show that the salary is to be paid in advance, the limitation as to each month's salary commences from the time at which the salary became due.—6 W. R., C. R., 33.

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140. The attachment of property in execution of a decree (although attachment is afterwards set aside) is a sufficient issuing of process of execution within the meaning of s. 21.—7 W. R. 9.

141. An appeal from an order setting aside an execution is a *bonâ fide* proceeding to keep alive the decree under s. 20.—*Ib.*

142. Where a suit was brought on an instalment-bond where all was done on the first default, and not upon any fresh agreement between the parties, the period of — (with reference to s. 4) was held to run from the time when default was made in payment of the first instalment in consequence of which the whole amount became due. — (F. B.) 7 W. R. 21. *See* 11 W. R. 570, 12 W. R. 71.

143. A suit for an account and for plaintiff's share of profits after an admitted dissolution of partnership is governed by cl. 16 s. 1.—7 W. R. 36, 19 W. R. 277. *See* 14 W. R. 184.

Where there was a clause in the agreement by which defendants (the working partners) undertook to be liable for any outstandings in respect of goods sold on credit, the sale of goods on credit was held not to be any breach of contract bringing the suit under cl. 9.—19 W. R. 277.

144. The want of an admission in writing as required by s. 4 cannot be supplied by oral evidence of the admission. —7 W. R. 46, 8 W. R. 289.

145. S. 170 Act VIII does not empower the Court to decree a claim barred on the face of it by —.—*Ib.*

146. A suit for breach of contract not in writing against a *del credere* agent who, for a certain commission, was employed to sell plaintiff's goods, is governed by cl. 9 s. 1 and is not taken out of the operation of that law by either s. 4 or s. 8.—7 W. R. 67, 16 W. R. P. C., 35. *See* 14 W. R. 184, 19 W. R. 277.

147. S. 4 is not applicable to the execution of decrees.— 7 W. R. 79, 24 W. R. 282.

148. If there is no disability at the time that the cause of action arose, a subsequent disability will not take the case out of — under s. 11.—7 W. R. 134, 12 W. R. 1.

149. How applied in a case of dispossession, by a stranger, of a portion of the family estate, where a son is born subsequently to such dispossession.—*Ib.*

150. S. 5 does not apply to a case of priority of *bonâ fide* purchase.—7 W. R. 138.

151. The final decision, award, or order contemplated by cl. 5 s. 1 Act XIV is a final decision of the Court which has competent jurisdiction to determine the case finally, and not the order of a Court superior to such Court dismissing an appeal from the decision of such Court for want of jurisdiction.—7 W. R. 151.

152. A suit for balance of account consisting of moneys advanced in payment for goods to be subsequently supplied, is governed by cl. 9 s. 1; the cause of action accruing at the time when the goods ought to have been delivered.— 7 W. R. 164.

153. A summary order made under Act XIX of 1841 and intended only to affect the question of possession, does not bar a regular suit to try the title. Such suit may be brought within 12 years under cl. 12 s. 1.—(F. B.) 7 W. R. 199.

154. Where a proclamation under s. 249 Act VIII declared that the right, title, and interest of S were to be sold in execution, and the sale certificate under s. 259 by mistake recited that the right, title, and interest of K as well as S had been sold, and gave the defendant possession, it was held that the plaintiff, who claimed through K, could bring a regular suit to regain possession at any time within 12 years under cl. 12 s. 1 Act XIV, and that he was not bound to apply under s. 269.—(F. B.) 7 W. R. 253. *See also* 17 W. R. 429.

155. A person dispossessed under a sale in execution against other parties, is entitled to sue to establish his title and to recover possession at any time within 12 years from the time he was dispossessed, according to cl. 12 s. 1.— (F. B.) 7 W. R. 256. *See* 20 W. R. 165.

156. How reckoned under ss. 20 and 21 on an application to execute a decree.—7 W. R. 330.

157. Seeing anterior possession only, without proof of title, cannot avail a plaintiff suing to recover possession after ouster, if he has failed to sue within 6 months after alleged ouster as prescribed by s. 15. — 7 W. R. 332, 8 W. R. 370, 15 W. R. 38, 24 W. R. 435.

158. A suit for malikhana is governed by cl. 13 s. 1.— 7 W. R. 336, 10 W. R. 302.

Cl. 12 s. 1 was held applicable to such a suit. — 9 W. R. 102, 19 W. R. 94. *See also* 12 W. R. 46, 468; 22 W. R. 520.

159. The case of a reversionary heir, contingent upon the death of a Hindoo widow, does not fall within s. 11, as the cause of action does not accrue till the widow dies and his right becomes absolute.—7 W. R. 357. *See* 15 W. R., P. C., 41.

160. A suit to set aside the alienation of ancestral immoveable property, made by a childless Hindoo widow during her life-tenancy, may be brought within 12 years from the death of the widow, as prescribed by cl. 12 s. 1. —7 W. R. 450.

Even though the widow has never had possession.— 7 W. R. 453. *See* (*F. B.*) 9 W. R. 460, 505.

161. A suit to recover moveable property seized under a sham decree against another is governed by cl. 16 s. 1.— 7 W. R. 499.

162. In a suit by a son to set aside an alienation by his father, limitation runs from the date of alienation or of possession under it, unless the son was a minor, in which case (according to s. 11) the suit must be brought within 3 years from the time when the disability ceased.— 7 W. R. 502. *See also* 11 W. R. 532.

163. According to ss. 20 and 21 read together, process of execution may be issued upon decrees in force at the time of the passing of this Act within the time mentioned in s. 21, without any prior proceeding having been taken; but if an application is made to enforce such a decree more than 3 years after the passing of the Act, no execution shall be issued upon it, unless some proceeding shall have been taken to enforce it or to keep it in force within 3 years next preceding the application for execution. If such proceeding has been taken, it is not too late although the decree may have been in force at the time of the passing of this Act, and the application for execution made more than 3 years after the passing of the Act.—(F. B.) 7 W. R. 515. *See* 8 W. R. 88, 9 W. R. 565, 11 W. R. 80, 12 W. R. 281.

164. The period of limitation prescribed by s. 20 is to be calculated from the date of the judgment, decree, or order which the person in whose favor it is given is at liberty to enforce by execution, whether such judgment, decree, or order be that of the Lower Court or given on review or appeal. (F. B.) 7 W. R. 521. *See also* 9 W. R. 397, 11 W. R. 570, 16 W. R. F. B. 1, (P. C.) 17 W. R. 292.

Where a decree is affirmed in review or appeal, the decree of the Appellate or reviewing Court is the final decree to be executed.—23 W. R. 57.

165. A mere application for a review or a petition of appeal by the person against whom the judgment was given, without something done by way of opposition by the person in whose favor the judgment was given, would not be an act done by the latter for the purpose of keeping the same in force under s. 20.—(F. B.) 7 W. R. 521. *See* 13 W. R. 78, 16 W. R. 266, 18 W. R. 7, 19 W. R. 185.

166. A suit to recover possession with mesne profits, as part of plaintiff's *mál* tenure, of land which defendant is alleged to be holding on an invalid lakheraj tenure, must, under cl. 12 s. 1, be brought within 12 years from the date on which defendant began to hold the land in dispute rent-free.—7 W. R. 531.

167. S. 4 is confined to an acknowledgment in writing signed by the debtor himself and not by his agent.— 8 W. R. 1, 10 W. R. 175.

168. How applied in a suit to recover money paid by Government for land taken for public purposes, which plaintiff alleges to belong to him and not to defendants.— 8 W. R. 23.

169. How applied under cl. 12 s. 1 where, before getting at mortgagee, plaintiff had to contest the adverse title of original mortgagor's daughter-in-law.—8 W. R. 34.

170. Act XIV contains no such provision as the old Law of Limitation did, by which a party was not precluded from proceeding with his suit, if he showed good and sufficient reason for not bringing it within the period of limitation.—8 W. R. 55.

171. Where judgment-debtors appear and admit the debt and promise to pay within a given time, execution may proceed though the period of 3 years from the passing of Act XIV has expired.—8 W. R. 63.

172. But when property is devised by will to executors.

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any admission by other parties does not bind the estate; nor does the admission of one executor bind another.—*Ib.*

173. According to s. 20, where a decree has passed against several defendants each of whom is declared to have a separate liability in respect of a definite amount, execution against one or more of such judgment-debtors keeps the decree in force against all simultaneously.—8 W. R. 80. *See contra* 10 W. R. 10, (*affirmed by F. B.*) 19 W. R. 30, 25 W. R. 310.

So held as to an application under s. 119 Act VIII.—20 W. R. 286.

174. A suit brought not to set aside an order of release under s. 246 Act VIII, but to recover possession from the successful claimant of the property, is not governed by cl. 5 s. 1.—8 W. R. 93. *See also* 11 W. R. 134.

175. An unsuccessful suit by a decree-holder to have specified property made liable under his decree, is a proceeding under s. 20 to keep the decree in force.—8 W. R. 98, 99; 10 W. R. 248; 11 W. R. 205.

176. The holder of a decree for possession and mesne profits is not obliged to apply for execution of both within 3 years from the passing of the decree, but may first apply for execution as to possession and costs, and then (within 3 years from the date of such application) seek to enforce the decree as to mesne profits.—8 W. R. 99, 274.

177. Execution of a joint decree may, under s. 207 Act VIII, be taken out by one of several decree-holders for the benefit of the rest, and an application by one keeps the decree alive under s. 20 for the benefit of all.—6 W. R., Mis., 59, 76; 8 W. R. 100; 9 W. R. 485; 10 W. R. 95; 11 W. R. 343, 421; 13 W. R. 128; 15 W. R. 419; 16 W. R. 29. *But see* 13 W. R. 244.

178. A suit to set aside a summary order passed under Act XXVII of 1860 may be brought within one year from the date of the order; but such order does not bar a suit upon title after the year.—8 W. R. 126.

179. The fact of the decree-holder getting possession of property from the debtor within 3 years is sufficient to take the case out of the Law of Limitation.—8 W. R. 199.

180. Cl. 6 s. 1 will not enable a person to come in within 3 years after the date of the awards therein mentioned, and recover possession of lands in respect of which his suit has been barred by other provisions of the Law of Limitation.—8 W. R. 209.

181. The taking out, by a decree-holder, of money deposited in Court by his judgment-debtor is an effectual proceeding under s. 20 to keep the decree in force.—8 W. R. 274.

182. Where the holder of a decree made in 1845, though annually praying for execution, never applied to be put in possession, and in 1864 issued notice to judgment-debtors, such notice was held to be not *boná fide*, and the proceedings to be not sufficient to keep the decree alive.—8 W. R. 306.

183. A suit to recover money secured by a mortgage deed, but seeking only for a money-decree, is governed by cl. 10 s. 1, but a suit to recover the lands mortgaged and to hold them as security for the debt would come within cl. 12.—7 W. R. 354. *See also* 121 *ante* and 8 W. R. 334.

184. Memoranda of payments made, indorsed on the bond and signed by the defendant, are not acknowledgments in writing within the meaning of s. 4.—8 W. R. 334.

185. The sale at the instance of a judgment-creditor is a proceeding to keep the decree alive under s. 20, but the confirmation of the sale is no proceeding of the judgment-creditor.—8 W. R. 359, 9 W. R. 100, 11 W. R. 117, 15 W. R. 38, 315. *See* 10 W. R. 224. *But see* 280 *post*, and 18 W. R. 156.

186. The Civil Courts may, notwithstanding s. 15, give a decree for immoveable property on the ground of illegal dispossession, in a suit brought after 6 months from date of such dispossession, and where plaintiff has not proved his title.—8 W. R. 386.

187. Irrespective of s. 15, possession for 60 years gives a title which cannot be repudiated; adverse possession for a period sufficient under Act XIV is a title even against the rightful owner; and prior possession, however short, is a title against a mere wrong-doer.—*Ib.* *See* 11 W. R. 550.

188. Jurisdiction of Civil Courts in regard to cases of dispossession illustrated with special reference to s. 15 of above Act, and ss. 318 and 319 Act XXV of 1861.—*Ib.*

An award under s. 318 Act XXV is no bar to a possessory action under s. 15 Act XIV.—20 W. R. 12.

189. A suit for breach of contract on repudiation of a lease is governed by cl. 10 s. 1.—8 W. R. 442.

190. The limitation of one year prescribed by cl. 2 s. 1 for bringing a suit for damages for injury caused to reputation by a malicious prosecution in a Criminal Court runs from the date on which the plaintiff was discharged from custody and not from the date on which the criminal charge was preferred.—8 W. R. 443, 12 W. R. 89. *See* 10 W. R. 308.

191. A decree of the High Courts on their original or appellate side may be executed within 12 years under s. 19, although the decree of the Court from which the appeal is preferred must, if that Court is not established by Royal Charter, be executed within 3 years under s. 20.—8 W. R. 470. *See* 12 W. R. 73, 14 W. R. 288, 16 W. R. F. B. 1, (P. C.) 17 W. R. 292.

192. Cl. 7 s. 1 applies to orders respecting possession of property made under cl. 2 s. 1 or under Act IV of 1840; but not to an order under s. 318 Act XXV of 1861, a suit to set aside which and to recover possession can be brought within 12 years.—8 W. R. 490. *See also* 9 W. R. 480.

So also as to an order made under s. 320.—17 W. R. 281. *See also* W. R. Sp. 106.

193. An acknowledgment in writing, *sealed* but not *signed*, is not an acknowledgment within the meaning of s. 4.—8 W. R. 513.

194. Where there is an unregistered bond to secure the payment of a sum of money charging the lands, by way of simple mortgage, with payment of the debt, a suit to have it declared that the lands are charged with the payment of the debt, and for an order for their sale, falls under cl. 12 s. 1.—(F. B.) 9 W. R. 170, 10 W. R. 379. *See* 19 W. R. 255, 21 W. R. 185.

195. When a mortgagor, after a mortgage has been satisfied, sues for the recovery of the property mortgaged, cl. 15 s. 1 applies; but when he sues for surplus collections made by the mortgagee in possession, cl. 16 applies.—(F. B.) 9 W. R. 187.

196. A mortgagee is not a trustee for a mortgagor within the meaning of s. 2.—(F. B.) *Ib.*

197. A suit for the price of goods sold wholesale, if there was no written agreement, is governed by cl. 9. s. 1.—(F. B.) 9 W. R. 193.

198. A claim to set aside a sale of land made in execution of a decree is virtually a suit for land and is governed by cl. 12 s. 1.—9 W. R. 199.

199. A proceeding releasing some judgment-debtors from execution, and declaring the liability of others, is within the meaning of s. 20.—9 W. R. 240.

200. Where an allegation of fraud, even if true, does not exhibit a concealment of the cause of action within s. 9, nor does the alleged fraud constitute a cause of action within s. 10, limitation will apply.—9 W. R. 255.

201. How applied in a suit against the heirs of a gomashta to recover the aggregate amount of certain sums overdrawn by him to the date of his death, less the salary due to him during his incumbency.—9 W. R. 331 (*overruled* by 11 W. R. 76). *See* 14 W. R. 184.

202. A suit for damages for breach of contract to deliver up manufactured indigo falls under cl. 9 s. 1.—9 W. R. 367.

203. S. 14 refers to suits and also to applications in execution.—(F. B.) 9 W. R. 402. *See also* 24 W. R. 303.

204. An order in execution giving mesne profits having been reversed because the original decree said nothing about them,—*Held* that this was not a dismissal for want of jurisdiction within the meaning of s. 14.—(F. B.) *Ib.*

So held under Act IX of 1871.—25 W. R. 540.

205. No proceeding will be effectual under s. 20 unless it be *boná fide*, and *bona fides* will generally be presumed. *Quære.* Whether the question of *boná fides* is one of law or fact.—9 W. R. 443. *See* 12 W. R. 357, 13 W. R. 40, 15 W. R. 203.

206. An order for costs made in execution is not of the nature of a summary award described in s. 22, but comes within the word "order" in s. 20.—9 W. R. 458, 11 W. R. 98, (*affirmed by F. B.*) 13 W. R. F. B. 74.

So also an order for restoration of excess land.—16 W. R. 182.

207. Where a co-owner, fraudulently failing to pay his share of rent, permits a putnee to be sold for arrears, the

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other co-owner's cause of action accrue under s. 10, at date of sale.—9 W. R. 553.

208. Where an award of a Collector under Reg. VII of 1822 was in favor of the mortgagee in possession on the ground that the period of redemption had expired and he settled with him, cl. 6 s. 1 was held to apply.—9 W. R. 564.

209. S. 15 does not affect the general law on the matters to which it relates, but provides a special remedy for a particular kind of grievance, *e.g.* to replace in possession persons wrongly convicted and to prevent the improper shifting of the burden of proof.—9 W. R. 602.

210. By the word "proceeding" in s. 20 is meant a proceeding not barred by limitation. Thus an application made within three years of another application which had been refused because it was beyond time, is itself beyond time, although the rejected application was *bonâ fide*.—(F. B.) 10 W. R. F. B. 8. *See also* 11 W. R. 209, 12 W. R. 255, 15 W. R. 530, 18 W. R. 190, 24 W. R. 339, 25 W. R. 546.

211. The three years "preceding the application" allowed by s. 20 are exclusive of the day on which the application is made.—10 W. R. 5. *But see* 13 W. R. 122.

212. A suit to contest a thakbust award and map made under Regs. VII of 1822 and IX of 1825 is barred under cl. 6 s. 1, unless brought within 3 years, whether plaintiff is legally bound by it or not.—10 W. R. 22.

213. But cl. 6 s. 1 does not apply where plaintiff remains in possession, for his suit is not a suit to *recover* property.—*Ib.*

214. Where a Survey award was unsuccessfully appealed, first to the Deputy Collector and then to the Board of Revenue, time began to run (under cl. 6 s. 1) from the date of the order of the Board of Revenue.—10 W. R. 51.

215. Where a merchant or trader advances money on loan (the transaction being a single one), the repayment by the debtor does not constitute a mutual dealing between merchants and traders under s. 8.—10 W. R. 56.

216. How applied in a suit to recover money advanced on deposit of title-deeds, and how where the creditor seeks to have his lien realized.—*Ib.*

217. A claim to set aside a Survey award and for possession, alleging dispossession subsequent to date of award, comes under cl. 12 and not cl. 6 s. 1.—10 W. R. 71.

218. In a suit for immoveable property, the fact that plaintiff claims as lessee under Government does not take the case out of cl. 12 s. 1 or bring it within s. 17.—10 W. R. 76. *See also* 14 W. R. 170.

219. The cause of action against a lessee who, by agreement, having for some time made annual payments to lessor's creditor out of the rent in liquidation of lessor's debt, withholds them while a balance of the debt is still due and the creditor gets a decree against the lessor, accrues from the date of the lessee's breach of contract, *i.e.* of his failure to pay.—10 W. R. 80.

220. Steps taken towards placing the assignee of a decree in the position of the original decree-holder are not enough to keep the decree alive under s. 20.—10 W. R. 127.

221. The date from which the limitation of 60 years will count under cl. 15 s. 1 is the date of the original mortgage.—10 W. R. 219.

The period of 60 years which the law allows mortgagors cannot be diminished on the ground of laches in the prosecution of their rights.—(P. C.) 23 W. R. 99.

222. The receipt of the proceeds of a sale in execution of a decree is a proceeding within the meaning of s. 20.—10 W. R. 224.

223. A dispute between the purchaser of a decree and a third party, and the proceedings connected therewith, are not proceedings within the meaning of s. 20.—10 W. R. 240.

224. Where the proceeding is found to be made *bonâ fide*, it is immaterial under s. 20 whether it is successful or not, although the fact of its being unsuccessful may be evidence against the *bona fides*.—10 W. R. 248. *See also* 11 W. R. 8, 210, 567, and 297 *post*.

225. Resistance to legal proceedings taken by another person will count as a proceeding under s. 20 just as effectually as proceedings actually initiated by the judgment-creditor himself.—*Ib.*

226. By adverse holding for more than 12 years, a tenant gains a right of occupancy under s. 6 Act X as against one absent involuntarily in consequence of transportation, there being no exception in Act XIV with regard to plaintiffs who are beyond sea whether voluntarily or involuntarily.—10 W. R. 253.

227. A tehseeldar is not a "servant" within the meaning of cl. 2 s. 1.—10 W. R. 261.

228. A Hindoo widow, in possession of an undivided half of her husband's estate, after his decease, is barred by limitation from recovering the other half if she allows adverse possession of it for more than 12 years.—10 W. R. 264.

229. In a suit for damages on account of a false and malicious statement made by the defendant before a Magistrate, in consequence of which criminal proceedings were taken against plaintiff, limitation under cl. 2 s. 1 runs, not from the date on which plaintiff was acquitted and discharged, but from the time the alleged statement was made, or from the date of any resulting damage.—10 W. R. 308.

230. The transmission by the Court of one district to the Court of another, of a copy of its decree and a certificate, under ss. 285 and 286 Act VIII, with a view to execution in that other district, is a *bonâ fide* proceeding within the meaning of s. 20 Act XIV.—10 W. R. 337.

Even though the latter Court may neglect its duty.—11 W. R. 403.

231. Cl. 7 s. 1 does not apply to an award passed under Act IV of 1840 against a benameedar for the present plaintiffs.—10 W. R. 314.

232. Where the amount of mesne profits cannot be ascertained till after the end of the year, the cause of action does not arise until the end of the year.—10 W. R. 486, 17 W. R. 208, 22 W. R. 126.

233. How applicable to a suit to recover compensation for lands taken by Government when plaintiff was referred to the Civil Court after the period of limitation had expired.—11 W. R. 1.

234. In a suit to recover a deposit paid as part of purchase-money of an estate when the residue not having been paid within the stipulated time, the property was re-sold and plaintiff obtained a decree for specific performance which was reversed in appeal, the cause of action for the recovery of the money under cl. 9 s. 1 was held to have arisen from the date of the Judge's decision in appeal.—11 W. R. 24.

235. Cl. 13 s. 1 does not prevent a Court from drawing its own inferences as to what constitutes *payment*, from the facts legally proved before it.—11 W. R. 45.

236. The decree of the Appellate Court is an original decree in respect of all the costs both of the Appellate and the first Court; and whether it provides for, or in detail refers to, the costs in the Lower Court, or merely incorporates that order as to costs, in either case it is a "judgment decree or order" as to costs within the meaning of s. 20, from which a new period of limitation can be computed.—11 W. R. 67.

237. The rights of Government to stamp fees under s. 309 Act VIII is a public right to which Act XIV (as expressly provided by s. 17) does not extend, and to which therefore s. 20 has no application.—*Ib.*

238. A *benamee* transaction does not create the relationship of trustee and *cestuique* trust between the benameedar and the real principal, so as to make a benameedar a trustee for the real owner within the meaning of s. 2.—11 W. R. 73.

239. Act XI of 1861 does not apply to decrees which were not in force at the time of the passing of Act XIV of 1859.—11 W. R. 100.

240. Where rents have been claimed on behalf of plaintiff in the full knowledge of the existence of the putnee pottah, and payments enforced under Reg. VIII of 1819 by the manager, and these proceedings are not repudiated by plaintiff on coming of age, cl. 12 s. 1 applies to a suit to set aside the putnee lease.—11 W. R. 102.

241. The words "summary decision or award" in s. 23 mean a decision of a Civil Court not being a decree made in a regular suit or appeal.—11 W. R. 117.

242. A possessory award under s. 15 is a summary award to which s. 22 is applicable, and is not a final one on the matter at issue between the parties.—11 W. R. 188.

243. In a suit for the cancelment, on the ground of fraud, of an auction-sale made under s. 12 Reg. XLV of 1793, and for the reversal of the Judge's order in appeal

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confirming the sale, limitation was held to run, under s. 9 Act XIV, from the date of the Judge's order of confirmation, and to extend to one year under cl. 3 s. 1.—11 W. R. 261.

244. A suit against an intervenor who has made himself responsible for the whole amount of a defendant's debt on the latter's failure to pay the first instalment in the decree, is a suit to recover money on a written contract by reason of a breach thereof, and comes under cl. 10 s. 1.—11 W. R. 330.

245. The case of a Hindoo widow residing in her late husband's family dwelling-house and being maintained there, comes under cl. 13 s. 1.—11 W. R. 338. *See also* 25 W. R. 37.

Proof of division of money or of payment not being necessary.—17 W. R. 530.

246. As applied under cl. 16 and not cl. 15 s. 1 to a case in which the purchaser of B's share of an ijmalee mehal finds that the balance in his favor of Government revenue paid in on account has been drawn by B's judgment-creditors.—11 W. R. 491.

247. In the case of an instalment made payable at a future date by the terms of a decree, there is no present right to realize the instalment at the date of the decree; and when the instalment becomes due, then the present right to enforce it accrues. An application to enforce payment of such an instalment is within time if made before the lapse of 3 years from the date fixed for payment by the terms of the decree.—11 W. R. 570, 14 W. R. 414, 23 W. R. 41. *See* 253 *post.*

248. A suit for mesne profits instituted after Act XIV came into force is subject to its provisions although founded on a decree for possession in a suit instituted before the passing of that Act.—12 W. R. 5.

249. A suit for breach of contract by defendant to admit plaintiffs, his uterine brothers, to a share of his adopting father's property, is governed by cl. 9 s. 1.—12 W. R. 22.

250. — never begins to run until there has been a cause of action.—12 W. R. 167.

251. Where the High Court rejected an application for review of a judgment passed by the late Sudder Court, it was held that, while the decree of the Sudder Court was governed by ss. 20 and 21, the only law applicable to the decree of the High Court was s. 19.—12 W. R. 313.

252. An acknowledgment made by an agent, which was not expressly authorized by the principal (a mortgagee) and was not a necessary part of the agent's duty on the occasion, cannot be dealt with as an acknowledgment under cl. 15 s. 1.—12 W. R. 443.

Affirmed by the P. C., who held that the above clause applied to every kind of mortgage including usufructuary mortgages.—(P. C.) 20 W. R. 375.

253. The fact of a decree-holder agreeing by kistbundee to accept payment of his decree by instalments, and binding himself not to issue execution within a certain time, does not affect the question of limitation, but the Court executing a decree is bound to execute it as it finds it, and cannot add to or in any way alter the terms of the original decree in consequence of any consent of the parties. The relinquishment by the decree-holder of an attachment of the judgment-debtor's property is not a proceeding to keep the decree in force within the meaning of s. 20.—(F. B.) 13 W. R. F. B. 44. *See also* 13 W. R. 164; 14 W. R. 414, 430; 17 W. R. 396; 19 W. R. 155; 23 W. R. 129; 21 W. R. 282. *But see* 18 W. R. 497.

254. A suit for refund of excess rent is governed by cl. 16 s. 1.—13 W. R. 34.

255. In a suit for possession of land, where defendants alleged that the widow from whom they bought received it by *hibbah* in lieu of dower, and plaintiffs contended that their father held it up to the year of his death from which time the widow had held as guardian,—*Held* that as the issue of limitation raised in the first Court was a special issue as to minority under s. 11, plaintiffs were entitled to be heard on the issue of general limitation under cl. 12 s. 1.—13 W. R. 62.

256. Though it is the duty of the Court under s. 2 Act XXIII of 1861 to issue process after application has been made for execution, yet the law fully intends that, when the decree-holder sees that the Court has taken no steps to issue any process, he shall be diligent and move the Court from time to time, as required, to keep him within the period of limitation.—13 W. R. 83.

257. A suit for a doctor's fees, where no arrangement is made at the time, is governed by cl. 9 s. 1.—13 W. R. 96.

258. An act done in furtherance of a decree in which the decree-holder cannot in reason expect success and which is not followed up by any other proceeding for more than three years, cannot be said to be done *bonâ fide*.—13 W. R. 164. (*Reversed by P. C.*) *see* 297 *post.*

259. In applying — the time must be reckoned according to the English Calendar.—13 W. R. 183.

260. Where possession of land and of moveable properties is decreed, and defendant appeals as regards the moveables alone, the proceeding of the Appellate Court giving a modified decree, does not keep in force the decree for the possession of the land.—13 W. R. 309.

261. A suit for a legacy where plaintiff's mother, who was to have received the principal of certain money and land on the birth of a male child, died before she had drawn the principal or taken the allotment of land, was held barred under cl. 11 s. 1.—13 W. R. 354.

262. How applied to claims for dower under the Mahomedan law.—*See* Dower 17.

263. A suit to recover excess lands wrongfully taken under cover of a decree comes within cl. 12 s. 1.—13 W. R. 459.

264. A suit by the indorsee of a Bill of Exchange against the acceptor thereof was held barred by —, more than 6 years having elapsed since the due date of the Bill of Exchange.—14 W. R., O. J., 5.

265. Cl. 9 s. 1 was held applicable to a suit for balance of *aurutdaree* account and for commission and interest; the cause of action in such a suit accruing from the close of the year in which the last item was admitted or proved, indicating the continuance of mutual dealings.—14 W. R., O. J., 7.

266. The period of 3 years allowed to a merchant by s. 8, to sue another on a balance of accounts as on mutual dealings, was intended to be reckoned from the time when the balance of accounts is struck, such balance being struck yearly.—14 W. R., O. J., 41.

267. A suit upon an unregistered promissory-note executed at a time when Act XVI of 1864 was in force, is governed by the three years' limitation prescribed by cl. 10 s. 1 Act XIV.—14 W. R., O. J., 51.

268. In applying cl. 9 s. 1 to a suit for principal and profits of money lent to be laid out in trade, where the matter had been referred to arbitration, and the arbitrators, in making their award, were unable to settle the exact sum due to plaintiff,—*Held* that plaintiff's cause of action arose when she made her demand for the money after the arbitration award.—14 W. R. 87.

269. The mere payment of *tullubana* by a decree-holder is not sufficient evidence of a *bonâ fide* intention on his part to execute his decree.—14 W. R. 112, 15 W. R. 530, 17 W. R. 355. *But see* 15 W. R. 162, 356.

270. How applied under s. 8 to a suit, although for balance of account between merchants and traders who had mutual dealings, yet in reality founded upon a contract, and that contract not in writing.—14 W. R. 181.

271. A suit for a declaration that certain property ostensibly bought and held by one of the defendants was in fact the property of another of the defendants who was the judgment-debtor of the plaintiff, is not governed by cl. 3 s. 1, but by s. 246 Act VIII.—14 W. R. 192.

272. A suit to set aside a transfer of land made by the Revenue authorities for arrears of Government revenue comes within cl. 4 s. 1.—14 W. R. 203.

273. How applied under cl. 3 s. 1 to a Revenue Sale under Act VIII of 1865 (B. C.).—14 W. R. 281.

274. A suit to recover certain ornaments (or their value) obtained by defendant from plaintiff's ancestor with a view to borrowing money on them, was held to be governed by cl. 16 s. 1, and the cause of action to arise when defendant set up an adverse claim in respect of the ornaments.—14 W. R. 322.

275. A plea of limitation under s. 20 can only be raised by the defendant in the suit and not by third parties.—14 W. R. 391. *See also* 19 W. R. 226.

275*a*. Proceedings in execution shall be considered as being *bonâ fide* carried on every day of the time and every hour of every day, until a final decision is passed upon any

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pending point.—(P. C.) 14 W. R., P. C., 21; 15 W. R. 51, 182; (P. C.) 17 W. R. 292; 23 W. R. 327. *See* 15 W. R. 530, 17 W. R. 396.

276. Cl. 13 s. 1 does not apply to a suit in which one member of a joint Hindoo family, representing the rest of the members, sues to redeem a mortgage in which the title of the plaintiff to redeem is questioned, and the question of joint or not joint property has only to be decided incidentally for the purpose of establishing that title as against strangers.—(P. C.) 16 W. R., P. C., 24.

277. Before a person can obtain the benefit of s. 5, he must clearly show (1) that he is a purchaser (the meaning of which term defined), (2) that he is a purchaser *bonâ fide*, and (3) that he is a purchaser for valuable consideration.—(P. C.) *Ib.*, (P. C.) 23 W. R. 99.

278. As no period is fixed by cl. 10 s. 1 within which suits may be brought for breach of a contract which could not be registered by any law in force at the time of its execution, the law of limitation applicable to such suits is cl. 16.—15 W. R., O. J., 1.

279. A claim to exercise a right to a turn of worship of an idol is not a recurring cause of action, and a suit to enforce such a right is governed by cl. 16 s. 1.—15 W. R. 29.

280. Until the order is passed confirming a sale in execution, the decree-holder must be considered to be executing his decree, and limitation begins to run against him only from the date of such order.—15 W. R. 51.

281. How applied under cl. 12 s. 1 in a suit by a member of a family for declaration of right and title to certain villages in a family estate in which the rule of primogeniture prevailed to meet ancestral debts, and against which the Political Department in Chota Nagpore had taken out attachment.—15 W. R. 102.

281*a*. An application to execute an aliquot part of a decree, though irregular and ineffectual for the purpose, must, if made *bonâ fide* under a misapprehension of the law, be regarded as a proceeding which keeps the decree alive.—15 W. R. 449, 16 W. R. 267.

282. An application to execute a compromise entered into after decree is not a proceeding taken on the basis of the decree and cannot keep the decree alive.—15 W. R. 514.

283. Whether a decree of a Lower Court be reversed or modified or affirmed on appeal by the High Court, the decree is a decree of the High Court, and is governed not by s. 19 but by s. 20; the decree passed by the Appellate Court being the final decree in the suit.—(F. B.) 16 W. R., F. B., 1 (*affirmed by P. C.*) 17 W. R. 292. *See* 18 W. R. 7.

284. The day on which a promissory-note payable on demand is made should be excluded in computing the period of — under cl. 9 s. 1.—16 W. R., O. J., 1.

285. By s. 5 and cl. 15 s. 1 it was never intended that, after the heirs of a mortgagee had enjoyed and held the mortgaged property for 100 or 200 years, the sale by one of their descendants should give a fresh cause of action, which might be enforced within 60 years, to the heirs of the mortgager.—16 W. R. 96.

286. Where a contract of loan was alternative, *i.e.* either to pay 6Rs. monthly by way of interest, or to repay the principal on demand, and the case fell within the rule that, where by the terms of contract, either express or implied, it is stipulated that a request or demand of performance shall be made, such demand must be made in order to complete the cause of action,—*Held* that the suit brought within 3 years from the date when plaintiff first made demand for repayment, was not barred under cl. 9 s. 1.—16 W. R. 164.

287. Before deciding that proceedings taken by a decree-holder to enforce the decree are not *bonâ fide*, a Judge ought to give him an opportunity of proving *bona fides*.—16 W. R. 296.

288. S. 15 contemplates the recovery of immoveable property, and not of a mere right, *e.g.* a right of way.—17 W. R. 70.

289. A suit for refund of proceeds of sale in execution of decree paid to a wrong party under s. 270 Act VIII is in reality a suit to alter or set aside a summary decision of a Civil Court, and is governed by cl. 5 s. 1.—16 W. R. 11, 17 W. R. 227.

290. The words "or other cause" in s. 14 apply to cases where the action of the Court is prevented by causes not arising from laches on the part of plaintiff; in other words by accidental circumstances beyond his control.—17 W. R. 266.

291. Statements made by a zemindar in petitions filed in Court are not admissions under Act XIV to take a case out of the ordinary rule of limitation.—17 W. R. 271.

292. S. 4 applies to what is merely an acknowledgment of a debt being due, and not to a writing by which time is given for the payment of the debt, and which comes within cl. 10 s. 1.—17 W. R. 406.

293. A suit by a guardian on behalf of a minor is the suit of the minor, and is governed by the — applicable to the minor.—17 W. R. 410.

294. Plaintiff's title to the property in dispute having been invaded by an award under s. 15, the present suit was brought to establish that title, and held to be governed by the limitation of 12 years from the date of the award.—17 W. R. 468.

295. S. 22 was held applicable to a process of execution to enforce a summary decision of the Revenue authorities under Reg. VII of 1799.—17 W. R. 471.

296. Limitation under cl. 8 s. 1 in a suit for putnee-rent was held to run from the time that plaintiff knew of the non-payment of the rent.—18 W. R. 59.

297. A petition presented *bonâ fide* by a decree-holder for execution in one suit of a sum of money attached in another suit is a proceeding within the meaning of s. 20 to keep the judgment in force. The fact that it was in the end abortive does not take from it the character of a proceeding to enforce the decree.—(P. C.) 18 W. R. 76, (P. C.) 21 W. R. 97. *See also* 20 W. R. 31, 21 W. R. 418.

298. A suit, not for rent, but for use and occupation of lands demised, is governed by cl. 16 s. 1.—18 W. R. 132.

299. Mere informalities in a petition for execution of decree cannot affect the *bona fides* of the proceeding so as to bar limitation.—18 W. R. 254.

300. A village chowkeedar appointed under s. 21 Reg. XX of 1817 is a servant within the meaning of cl. 2 s. 1 of Act XIV.—18 W. R. 298.

301. Where plaintiff supplied articles to defendant on condition of receiving *chittees* or notes to be returned at intervals after payment on presentation, and defendant on receiving *chittees* did not pay their amount but subsequently paid a portion,—*Held* that the breach of contract occurred when defendant failed to pay on presentation, and that plaintiff's suit thereon was governed by cl. 9 s. 1.—18 W. R. 450.

302. Plaintiff, while in C's service, entered into a joint adventure or partnership with C and a third party, it being arranged that C should retain in his hands plaintiff's monthly salary and appropriate so much as might be necessary to plaintiff's share of the expenses. After an account between the parties had been signed by plaintiff and a balance struck,—*Held* that all partnership transactions had ceased between the parties; that plaintiff could sue C for the balance of all salary and moneys in C's hands, but that his claim was not a partnership demand to be regulated by cl. 16 s. 1; and that the account did not fall within s. 8, but that the case was governed by cl. 9 s. 1.—18 W. R. 466.

302*a*. The words "rent of any buildings or lands" in cl. 8 s. 1 are large enough to comprehend all lands.—(P. C.) 19 W. R. 5, 23 W. R. 134.

303. How applicable to a suit for a declaration of title to land.—19 W. R. 32.

304. The only way in which effect can be given to the words "in the meantime" in cl. 15 s. 1 is by holding that they refer to the periods which had been previously mentioned; and the proper construction of the clause is that the acknowledgment must be given within the period of 30 or 60 years according to the nature of the property.—19 W. R. 78.

305. The date on which the cause of action arose is to be excluded in computing the period of —.—19 W. R. 94.

306. Wages due to an employee leaving his employer's service would be due on the date when he left the service; and any suit for those wages must, in the absence of any subsequent account stated and settled between the parties, be brought within 3 years from such date.—19 W. R. 159.

307. Under cl. 13 s. 1 a suit to enforce the right to a share of joint family property must be brought within 12

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years of the last payment to plaintiff on account of the share, or 12 years from the time of the plaintiff's being in possession of his share.—19 W. R. 192.

308. In a suit to recover money on account of rent for a monzah farmed out to plaintiff who could not get possession,—*Held* that the cause of action was a breach of contract, and the action one for damages falling under cl. 9 s. 1 if the contract was verbal or cl. 10 if in writing; and that this was not a case of *implied* contract as distinguished from a contract of actual agreement, but an obligation on the part of defendant to make good the loss caused to the plaintiff, arising independently of any actual agreement.—19 W. R. 244. *See* 21 W. R. 47.

309. Proceedings had in the High Court for the purpose of getting a Privy Council order sent down to the Lower Court for execution, whether strictly legitimate or not with reference to s. 2 Act XXV of 1852, must, if they are *bonâ fide* efforts made by the judgment-creditor to carry into effect that order, be taken to be proceedings keeping the decree alive.—19 W. R. 301.

310. Where the cause of action in respect of a bond had arisen in the lifetime of the person through whom plaintiff claimed, no further time under s. 2 was allowed to him by reason of his having been a minor.—20 W. R. 2.

311. Where a Judge in certain proceedings under Act IV of 1840 wrote to the Magistrate to leave certain *maliks* not in possession of the property in dispute to their civil remedy, the Magistrate's order directing the Judge's letter to be put up with the record is not an order within the meaning of cl. 7 s. 1.—20 W. R. 316.

312. S. 5 does not apply to a suit brought to recover property from the hands of a party who purchased it from a Mohunt.—20 W. R. 471.

313. In considering whether certain execution proceedings were *bonâ fide* or not under s. 20, the Privy Council did not confine themselves to one particular attempt to revive execution, but felt bound to look at the whole course of the proceedings; and when they found that the first proceeding had been prosecuted with effect, and that in a third attempt against which the judgment-debtor set up limitation, the decree-holder had successfully opposed him in two Courts, their Lordships thought there was strong evidence of a *bonâ fide* desire to execute the decree. —(P. C.) 21 W. R. 97.

314. S. 9 was held to apply in a case where plaintiffs alleged that they had been ousted from the enjoyment of property to which they were entitled, under color of a fictitious revenue-sale in pursuance of a fraudulent contract, the fraud having been so contrived as to make plaintiffs believe that they had no right of action at all.— 21 W. R. 109.

315. A right to *torah garas huk* was held to be an "interest in immoveable property" and governed by cl. 12 s. 1.—(P. C.) 21 W. R. 178.

316. Where a judgment-creditor, finding that all the available property of his judgment-debtor has been made away with, sets about the task of bringing back the property, the question whether his action is a proceeding taken to enforce the decree is one not of law but of fact, to be determined by the subsequent conduct of the judgment-creditor as showing a *bonâ fide* intention to execute or otherwise.—21 W. R. 188.

317. S. 20 applies only to such decretal orders as are complete in themselves and ready to be enforced, and not to so much of a decretal order as directs proceedings to be taken in order to assess the amount of mesne profits to be recovered by the judgment-creditor, which are merely a prolongation of the trial and not proceedings to enforce the decree.—21 W. R. 212. *See also* 22 W. R. 328.

318. A suit against an agent to recover money received by him and fraudulently concealed from the plaintiff falls within s. 9.—21 W. R. 245.

319. Where property is vested in a person partly for charitable purposes and partly for the benefit of others, and he is bound to use it for such purposes and not for his own advantage, he is a trustee within the meaning of s. 2.—21 W. R. 415.

320. A suit which, according to a part of its prayer, is one for possession and declaration of right, but which substantially seeks to set aside an execution sale, in virtue of which, unless got rid of, the defendant purchaser's title must prevail over that of the plaintiff's, comes within the purview of cl. 3 s. 1.—22 W. R. 84.

321. In a suit to recover possession of land alleged to have belonged jointly to plaintiff's late husband and his late elder brother, in which it was found that the two brothers lived in commensality, and that the elder brother collected the rents and profits and therewith managed the family expenses,—*Held* that if the younger brother did not receive money from the elder, he received money's worth, and that would suffice to bring the case within cl. 13 s. 1, or if that clause did not apply, cl. 12 must.— 22 W. R. 185. *See also* 24 W. R. 1.

322. A suit to recover plaintiff's share of mesne profits from a co-sharer who has received it from a judgment-debtor with plaintiff's permission but withholds payment to plaintiff is not governed by the 3 years', but the 6 years' —.—22 W. R. 255.

323. A suit by a banker to recover the balance of an account between himself and a customer, is governed by cl. 9 s. 1.—22 W. R. 263.

324. An agreement to grant a lease is governed not by cl. 12 but by cl. 16 s. 1.—22 W. R. 287.

326. Cl. 16 s. 1 applies to a suit to have an adoption declared invalid, the only exception to limitation beginning to run from the date of the adoption which is the cause of action, being that provided in s. 9, viz. when the cause of action is concealed by fraud.—23 W. R. 42.

327. *Quære.* What is the effect, under s. 20, of not executing a decree for three years.—23 W. R. 257.

328. Where money deposited in a bank is withdrawable at the depositor's will and pleasure, and the deposit carries compound interest with it, a debt becomes due at the end of each year without demand, and the depositor's claim is limited to 3 years from the date of deposit.—24 W. R. 42.

329. A commission agent suing his principal as such is not entitled to the limitation provided by s. 8.— 24 W. R. 440.

330. Where a settlement of accounts is made between two, and a sum found and admitted to be due by one to the other, the date on which this is done may be regarded as that of a new contract to pay within the meaning of cl. 9 s. 1 from which limitation must be counted.—*Ib.*

331. In an action brought upon a mortgage-bond which combines a personal obligation with the pledge of property, where the claim is founded not upon the contract to pay the money, but upon the hypothecation of the land, and the object is to obtain a sale thereof as against purchasers under a subsequent mortgage-bond, cl. 12 s. 1 applies.— (P. C.) 25 W. R. 81.

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Attached Property 8, 14.
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Limitation (Act LIII of 1860).

1. An application under s. 2 Act LIII of 1860 is not for a review of a judgment, but for revival of a suit, and therefore the provisions of s. 378 C. C. P., with reference to appeal, do not apply to it.—W. R. F. B. 11 (1 Hay 90, Marshall 38).

2. S. 54 Act X of 1859 precludes a plaintiff from again instituting a suit struck off under that section, if barred by —.—W. R. Sp. (Act X) 123.

See Practice (Review) 7.

Limitation (Act IX of 1871).

Under Act IX of 1871 the period of limitation for an appeal runs from the date of the decree appealed against, and the days which, under s. 13, may be excluded are only the days requisite for obtaining a copy of the decree, not a copy of the judgment.—21 W. R. 308 (*affirmed by F. B.*) 24 W. R. 105.

1*a*. Under Article 167 Sch. II an application for executing a decree is not a proper one unless it is in accordance with s. 212 Act VIII.—21 W. R. 309.

2. *Quære*. What is the effect of Act IX of 1871 upon the High Court's decisions as to the *bona fides* of proceedings to keep a decree in force.—*Ib*.

All questions of *bona fides* are now excluded, and a decree-holder is absolutely entitled to have his decree executed provided he comes within the period specified in Article 167 Sch. II.—22 W. R. 154. *See also* (F. B.) 22 W. R. 512, 23 W. R. 327, 25 W. R. 94.

3. An order for costs made by the High Court on appeal comes within the scope of Article 167 Sch. II.—21 W. R. 391.

4. The term "Court" in the same Article means the Court whose business it is, either by transfer or otherwise, to execute the decree.—21 W. R. 410.

5. S. 27 does not apply to a claim to restrain one co-sharer in a joint property from appropriating to his own particular use a portion of that joint property, not only without the consent, but against the expressed will, of other co-sharers.—22 W. R. 286.

6. Where one of several joint decree-holders made, under s. 207 Act VIII of 1859, a proper application for execution, the date upon which the application was made was held to constitute a point of time from which would run the limitation of 3 years provided in Article 167 Sch. II.—22 W. R. 168.

7. A notice issued within time under s. 216 Act VIII, and actually served upon the judgment-debtor, constitutes a starting-point for the commencement of limitation under the same Article; any question as to its *bona fides* notwithstanding.—22 W. R. 484, 23 W. R. 195.

8. Under Act IX of 1871, Government is bound to make an application for execution within the same time as any other person.—22 W. R. 512.

9. A decree-holder applying for the execution of a decree is entitled, under Act IX of 1871, to have such execution upon his showing that his application is made within 3 years next following a previous application to the Court to enforce the same decree, or from the date of issuing notice under s. 216 Act VIII in the same matter.—(F. B.) 22 W. R. 512. *See* 23 W. R. 282, 24 W. R. 227, 459; 25 W. R. 546.

11. The enjoyment described in s. 27 by the words "as of right" does not mean user without trespass, but user in the assertion of a right.—23 W. R. 52.

12. The effect of an order striking off execution proceedings in consequence of an adverse decision against the decree-holder under s. 246 Act VIII of 1859 is not to dispose of the application for attachment and sale. And if the result of a regular suit prosecuted with due diligence is a final decree in his favor, and he makes an application for the execution of this decree, such application is in substance one for the continuation of the former proceedings, and is therefore not an application to execute the decree within the meaning of Article 167 Sch. II.—23 W. R. 183.

13. The words "adoptive father" in Article 129 Sch. II must be construed strictly and not so as to include mother.—23 W. R. 285.

14. Where the father died before an adoption took place, the period of limitation for a suit to set aside the adoption begins to run from the date of the adoption.—*Ib*.

15. A minor on coming of age cannot avail himself of the benefit of s. 7 in respect of a right of suit which occurred before his birth.—*Ib*.

16. A party who claims under a contract the re-opening of a way is not required by s. 27 to prove user for 20 years.—23 W. R. 290.

17. In a suit to establish a right of way, it is not sufficient for plaintiff, according to the same section, to prove user for 20 years, which ended more than two years before the institution of the suit.—23 W. R. 401.

As to right to flow of water from plaintiff's to defendant's land.—24 W. R. 295.

18. An instalment-bond is not "a promise or acknowledgment" within the meaning of s. 20, but is complete in itself and does not require any reference to the old bond which it supersedes. It is a new contract with new stipulations and terms, and limitation runs from the due dates therein mentioned.—23 W. R. 462.

19. Where a person whose right to sue is limited (say) to 12 years, labors under a disability such as is specified in s. 7, and the disability continues up to his death, which occurs within those 12 years leaving some (say 8) years to run, his representative in interest has only the 8 years within which to sue. The fact of the representative being himself a minor, does not give him any more time, as he can sue through his guardian or next friend.—24 W. R. 7.

20. An application not made by the decree-holder at the time on the record, cannot be considered to be an application to execute the decree.—24 W. R. 10.

21. The date mentioned in s. 1 (1st April 1873) applies only to the institution of suits, whilst the Act applies to execution of decrees as from the 1st July 1871.—24 W. R. 20. *See* 24 W. R. 295, 25 W. R. 249.

22. A consent-decree for payment of instalments is governed by s. 23, and, on default in the payment of one instalment, the whole amount becomes due.—*Ib*.

23. A sum realized by an execution-sale cannot be considered a part payment under s. 21 so as to give a new period of limitation.—*Ib*.

24. A bond-suit was filed in a Moonsiff's Court on the day on which the Court re-opened after the Dusserah vacation, during which the period of limitation expired as to the payment of the bond-debt. The Moonsiff decreed the suit, but the Subordinate Judge in appeal found that the Moonsiff had no jurisdiction and ordered him to return the plaint, which was filed in the Small Cause Court on the same day. The defendants pleaded limitation. *Held* that under s. 15 the plaintiff was entitled to exclude the time during which he had been prosecuting the suit in the regular Courts up to the date of the Lower Appellate Court's judgment, but not the time during which he waited to get the plaint back; and that plaintiff could not claim the benefit of s. 5 cl. (*a*) as to the time during which the Moonsiff's Court was closed, because the suit was not instituted in the Small Cause Court on the day that Court re-opened.—24 W. R. 26.

25. The special period for bringing a suit, allowed by s. 7 to a minor or his representative in interest after his death, cannot be claimed by any other person in whatever way connected with the minor.—24 W. R. 181.

26. Act IX of 1871 does not warrant a decree in favor of parties, on the strength of a wrongful possession for more than 12 years.—24 W. R. 217.

27. Where, in consequence of default in the payment of rent, an adjustment of accounts was entered into between landlord and tenant, and a balance found to be due from the tenant,—*Held* that an action to recover such balance with interest was not a suit for arrears of rent under Act VIII of 1869 (B. C.), but a suit for the recovery of money on account governed by Act IX of 1871, Article 62 Sch. II.—24 W. R. 218.

28. Plaintiff's bullocks having been seized in execution of a decree obtained by defendant against third parties, plaintiff put in a claim and the bullocks were released on 15th January 1874. On 15th January 1875, plaintiff instituted an action for damages caused by the detention of the bullocks. *Held* that the suit was barred under Article 30 Sch. II.—24 W. R. 298.

29. S. 15 refers to applications for execution of decrees.—24 W. R. 303. *But see* 24 W. R. 405.

Limitation (Act IX of 1871) (*continued*).

30. The Registration Act mentioned in Article 168 Sch. II is Act VIII of 1871.—24 W. R. 372.

31. A suit to recover burial fees, the right to which recurs whenever a corpse is brought for burial, may be brought, under Article 131 Sch. II, within 12 years from the date of the first refusal of the exercise of the right.—24 W. R. 385.

32. In a suit to recover a balance with reference to payments made by plaintiff on account of defendant where no mutual accounts or reciprocal demands existed,—*Held* that plaintiff could not recover any items due more than 3 years prior to the date on which the suit was instituted, but that he was entitled to apply all payments, even those subsequently made, in reduction of so much of his claim as was barred.—24 W. R. 390.

33. In a suit for foreclosure, according to Article 135 Sch. II, limitation runs against the mortgagee from the time when he was first entitled to possession.—24 W. R. 433.

34. In a suit on a bond where a day is specified for payment, the period of limitation according to Article 65 Sch. II is to be computed from, and exclusive of, the day so specified as being the day on which the right to sue accrued.—24 W. R. 463.

35. A decree-holder having first asked the Court to attach certain immoveable properties, applied subsequently for the issue of a warrant of arrest, and finally prayed the Court not to proceed with those two applications, but to allow him to attach certain other properties; and this prayer was allowed. *Held* that this was virtually an abandonment of the two original applications which were virtually struck off, and that the last application was the one which came within the meaning of Article 167 Sch. II.—25 W. R. 106.

36. S. 20 cannot apply to partnership accounts, or to cases where one partner by the ordinary rules of partnership is able to bind his co-partner, and still less to a suit for the recovery of a balance due on a joint business account between two members of a firm carrying on business which is provided for by Article 62 Sch. II.—25 W. R. 145.

37. Where the owner of a house incapacitates himself by his own act from any possible use or enjoyment of a right of way to his house, he cannot be said, whilst this incapacity continued, to have been openly enjoying the easement and claiming a right thereto within the meaning of s. 27.—(O. J.) 25 W. R. 228.

38. Meaning of the terms "interruption," "abandonment," and "discontinuance" with reference to the above section. —(O. J.) *Ib.*

39. By an instalment-bond entered into by the defendants to save a sale of their property in execution of a decree against them, it was stipulated that, on default in the payment of any one instalment, the whole amount remaining due under the bond should be recoverable at once by execution of the decree; and default having taken place in the payment of the very first instalment, plaintiff sued for the amount due under the bond. *Held*, according to Article 132 Sch. II, that the "money sued for" did not become due when default was made in the payment of the first instalment, but on the several dates on which the instalments were payable.—25 W. R. 278.

40. Article 147 Sch. II applies to a deposit recoverable in specie, and not to an over-payment or a payment by mistake, which comes under the head of money had and received, and is governed by Article 60 or Article 118.—25 W. R. 415.

41. S. 19 does not apply to a case where the plaintiffs do not allege they claim through the party by whose fraud they allege they were kept in ignorance of their rights.—25 W. R. 425.

42. Article 95 Sch. II provides a period of limitation *in extension* of the period which, in the absence of fraudulent concealment, would, under some other Article, apply to a suit, and not a period *less* than what under ordinary circumstances is allowed for bringing a suit of the same nature.—25 W. R. 476.

43. A suit to have an account taken of what has been payable and paid by either party in pursuance of a contract, and to have a decree made for any balance found due to plaintiff, is governed, if not by Article 117, by Article 118 or 118.—*Ib.*

44. A suit to set aside an order (under s. 246 Act VIII) releasing property from attachment is governed by Article 15 Sch. II.—25 W. R. 513.

45. The words "not otherwise specially provided for" in Article 145 Sch. II refer to suits for possession of immoveable property, and not to suits generally or for specific performance of contract which may come under Article 113.—25 W. R. 521.

See Ex-parte Judgment or Decree 16.
Limitation (Act XIV of 1859) 204.

Limitation (Execution of Decree).

1. Where the original decree-holder fails to execute the decree in time, any right that another person may obtain to a share in the decree, can give her no further time.—1 W. R., Mis., 31.

2. Where an application for revival of execution has been admitted and acted upon without objection, and a sale takes place, and the debtor succeeds in setting aside the sale on the ground of irregularity, the Court executing the decree cannot of its own motion raise the question of —, nor can the debtor urge such a plea, at so late a stage as after the reversal of the sale.—5 W. R., Mis., 3.

3. Property held by a party for 21 years under a sale from another, cannot be attached in an execution against that other.—6 W. R. 161.

4. A corrected application for execution of a decree is not barred by limitation if the original application was in time.—6 W. R., Mis., 15.

5. When a decree contains separate decretal orders against separate individuals, limitation may apply against the different defendants as if there were separate decrees. —6 W. R., Mis., 18. *See* 8 W. R. 80.

6. Where one of two defendants appeals against a decree, if the decree was joint and several and the appeal imperilled the whole decree, the time for execution will count from the date of the decision in appeal.—6 W. R., Mis., 60.

7. Proceedings in execution, originating in illegality, and which have been the subject of contests by the judgment-debtor and are still under consideration in appeal, cannot be regarded as *bonâ fide* proceedings to keep alive the decree.—6 W. R., Mis., 91.

8. Where execution is barred by limitation, subsequent proceedings taken by the decree-holder, without objection on the part of the debtor, cannot get rid of the bar of limitation and revive the decree.—6 W. R., Mis., 118; 9 W. R. 390.

9. The principle that persons who are not parties to a suit are not bound thereby is not applicable to proceedings taken out to keep a decree in force.—12 W. R. 436.

10. Where a contest is raised between a decree-holder and a judgment-debtor as to service of notice, execution proceedings cannot be carried on further till the question is decided, and limitation in respect to further proceedings must run from the date of such decision.—14 W. R. 477.

11. An application for execution cannot be thrown out summarily as barred by limitation, because the decree-holder has failed to find any of his judgment-debtor's property or been baffled in his endeavours to satisfy his decree.—15 W. R. 67.

12. Certain sharers in a decree of which execution was sought, were allowed to count the time of pendency of a special appeal made by their co-respondents in which they did not appear but of which the grounds were common to all the respondents.—21 W. R. 243.

13. An Appellate Court ought not to conclude against the *bona fides* of an application for execution when not objected to in the first Court.—21 W. R. 244.

14. An application to the Court to ascertain and determine how much a judgment-creditor has been over-paid, is not barred by lapse of time if the applicant has not been guilty of laches and has come to the Court with due diligence.—22 W. R. 211.

15. Where, instead of suing out execution against P's estate as directed in his decree, a decree-holder brought a suit to have it decided who were P's legal representatives and obtained a decree, his application for execution of the original decree was held barred because made after three years from the date of it.—23 W. R. 160.

16. So long as one part of an indivisible decree is being executed, the whole is kept alive so far as the Statute of Limitations is concerned.—25 W. R. 70.

LIMITATION (EXECUTION OF DECREE) (*continued*).

See Appeal 181.
Decree 26.
Instalments 20.
Intervenor 48.
Jurisdiction 254, 359, 389, 506.
Limitation 112, 113, 123, 129, 130, 219, 227, 249, 250.
,, (Act X of 1859) 20.
,, (Act XIV of 1859) 31, 32, 59, 60, 77, 84, 85, 86, 87, 88, 110, 111, 112, 113, 129, 130, 132, 133, 134, 135, 136, 137, 140, 141, 147, 154, 155, 156, 163, 164, 165, 171, 173, 175, 176, 177, 179, 181, 182, 185, 191, 199, 203, 204, 205, 206, 210, 211, 220, 222, 223, 224, 225, 230, 236, 239, 247, 251, 253, 256, 258, 260, 269, 275, 275*a*, 280, 281*a*, 282, 283, 287, 295, 297, 299, 309, 313, 316, 317, 327.
,, (Act IX of 1871) 1*a*, 2, 3, 4, 6, 7, 8, 9, 12, 20, 21, 29, 35.
Practice (Execution of Decree) 56, 188, 216, 238, 261, 273.
Special Appeal 58, 126.

Limitation (Reg. III of 1793 s. 14).

1. In a suit for a share of joint inheritance where the defendant pleads —, the issue for decision is not whether the plaintiff was in possession up to date of suit, but whether the joint possession continued up to any time within the period of —.—W. R. F. B. 52 (1 Hay 376, Marshall 172).

2. In a suit for mesne profits.—(F. B.) W. R. F. B. 163 (L. R. 1).

3. In calculating —, the time during which the same subject-matter was pending in a Court which could not adjudicate upon it as being beyond its pecuniary jurisdiction, should be deducted.—2 Hay 628. *But see* 2 W. R. 45.

4. In a suit by a minor after attaining majority, no allowance can be made under Reg. III of 1793 for the period of pendency of a suit brought by his guardian and eventually non-suited.—W. R. Sp. 2.

5. Where the party in possession of an estate is a *bonâ fide* purchaser for valuable consideration without notice, and the real owner had neglected for 25 years to assert his right to the estate, mere distant residence was held not to be a sufficient cause to preclude the owner from making an earlier assertion of her right so as to save her from limitation by bringing her within the exceptions of s. 14 Reg. III of 1793 and s. 3 Reg. II of 1805.—(P. C.) 6 W. R., P. C., 24 (P. C. R. 124).

5*a*. The admission of a defendant that a demand was claimable from some quarter or other, but not as against the property in question, is not an admission within the meaning of Reg. III of 1793 excepting a suit from —.—(P. C.) 3 W. R., P. C., 31 (P. C. R. 405).

6. A party who had been endeavouring, by resort to competent Courts, to recover his rights, was held to be entitled to avail himself of the exception in the former law of —, although part of the proceedings was erroneous in enforcing an order made by a single Judge of the Sudder Court, which was ineffectual by reason of its not being confirmed by a second Judge.—(P. C.) 4 W. R., P. C., 63 (P. C. R. 427).

7. How applied in a suit for proprietary right to lakheraj land.—1 W. R. 35.

8. The cause of action in such a suit held to be the accrual of plaintiff's right.—*Ib.*

9. Summary and interlocutory proceedings in another suit no bar to —.—2 W. R. 65.

10. Discussion of the evidence required to prove admissions of indebtedness and promises to pay money, for the purpose of obtaining the benefit of the saving clauses of this section.—2 W. R. 221.

11. The time occupied in the Summary Department to recover excess of jumma according to a decree, should be deducted from — for the suit which is afterwards brought for the same purpose and to which the plaintiff was referred by the Sudder Court.—5 W. R. 51.

12. The pendency of a suit to set aside a Revenue sale cannot save from —.—6 W. R. 57.

13. Meaning of "clear and positive proof" as used in the above section.—(P. C.) 12 W. R., P. C., 36.

See Mortgage 85.

Limitation (Reg. II of 1805).

1. A general allegation of violent dispossession, without setting forth distinctly the particular violence, fraud, or unjust and dishonest means by which the defendant obtained possession of the property claimed, is insufficient to challenge the defendant to show cause why the special law of limitation, as laid down in s. 3 cl. 2, should not be applied to the case.—1 Hay 6.

2. Not only does the same provision of law require that the plaintiff should set forth distinctly the grounds on which he claims the extension of limitation, but that there should be a preliminary enquiry on the point so pleaded. Moreover, plaintiff's allegation of fraud should be a distinct one, and the forms prescribed by this law must be strictly observed.—1 Hay 55 (Marshall 22).

3. A suit by Government to establish its right and title to a julkur or other property is barred by — under s. 2 if brought after the expiration of 60 years after adverse possession against Government.—5 W. R. 115 (Sev. 385). *See also* 5 W. R. 136.

4. Peaceable possession by A for 15 years before the date of suit, was held to be a bar, under Reg. II of 1805, to any enquiry into the title of the defendants who held by purchase from A.—W. R. Sp. 5.

5. The *nullum tempus* clause of s. 3 does not apply to a case where the occupant was not a mortgagor or depositary otherwise than as he was subject to pay a portion of the proceeds of the property to another during her lifetime.—(P. C.) 5 W. R., P. C., 68 (P. C. R. 3).

6. This case which was originally instituted in the Zillah Court when s. 18 Reg. II of 1803 was in force, but which, having been appealed from the Zillah Court, was pending when Reg. II of 1805 was passed correcting Reg. II of 1803, was held to be subject to Reg. II of 1805.—(P. C.) 5 W. R., P. C., 95 (P. C. R. 20).

7. The recovery of costs by the East India Company for prosecuting appeals by virtue of the 3 and 4 William IV c. 41, does not constitute "a public right" within the meaning of Reg. II of 1805, enabling the Government to sue notwithstanding the lapse of time.—(P. C.) 3 W. R., P. C., 51 (P. C. R. 405).

8. A suit for rent is barred under cl. 3 s. 3 against a person who has been, by himself or by those under whom he claims, in peaceable possession without payment of rent for 60 years before the commencement of the suit. That clause takes away from the Courts all cognizance of any suit whatever if the cause of action shall have arisen 60 years before the institution of the suit; precludes all enquiry into any original defect in the title under which the possession commenced; and makes it unavailing to show that the possession commenced under a grant made null and void by Reg. XIX of 1793.—(P. C.) 5 W. R., P. C., 1 (P. C. R. 602). *See* 8 W. R. 232.

9. S. 3 must be construed with some strictness (otherwise the door would be opened widely to a large class of claims which ought properly to be barred), and the alleged fraudulent or forcible dispossession must be clearly established.—(P. C.) 22 W. R. 165.

See Limitation (Reg. III of 1793, s. 14) 5.
Resumption 10.
Securities (Government) 1.

Lis Pendens.

1. In a suit brought to recover a sum of money on a deed of compromise, the execution of which the defendant

LIS PENDENS (*continued*).

denied, alleging also that the subject-matter of the present suit was pending in part of another suit,—*Held* that the present defendants not being parties to the other suit, the doctrine of — did not bar this action.—1 Hay 509.

2. Parties litigating cannot alienate or encumber an estate so as to affect or prejudice their opponents.—Sev. 808.

3. In every Court — is generally considered notice to all the world.—*Ib.*

4. Alienations *pendente lite* are not necessarily void. Rule as to the effect of a pending suit on the rights of a party to that suit.—Sev. 951. *See* 21 W. R. 349.

5. The doctrine of — is applicable to natives of India and has a wider operation here than in England. Distinction between equitable lien created *pendente lite* and an absolute sale. In the latter case, though not in the former, it is necessary to institute a fresh suit.—1 Hyde 160.

6. By the rule of —, a decree pending a suit is not to be got rid of by a sale by one of the parties while the suit is pending.—10 W. R. 469.

But the party purchasing the right, title, and interest of another pending a suit against that other is bound by the judgment in that suit.—23 W. R. 329.

7. *Quære.* Whether the principle of — applies to the case of a purchase made after a decree by the first Court but before the filing of an appeal, although within the time for preferring the appeal.—20 W. R. 204.

8. The doctrine of — was held applicable to a purchaser under an execution against a mortgagor, notwithstanding the non-registration of the certificate of sale.—21 W. R. 349.

9. Possession of property obtained from a defendant while a suit is pending against him in respect of that property, must be taken to be the possession of the defendant himself for the purposes of the suit.—22 W. R. 547.

See Appeal 38.
Auction-Purchaser (Execution Sale) 14.
Declaratory Decree 53.
Joinder of Parties 10.
Jurisdiction 80, 161.
Limitation 54.
Money-Decree 14.
Practice (Attachment) 62.
Putnee Talook 66.
Res Judicata 38, 49.
Sale 188, 201.
Sheriff 4.

Loan.

1. Where B recovers money lent in his name to C, but contributed in shares by himself and A, A is entitled to share in what is recovered; and B, in suing, sues for all the lenders.—10 W. R. 45.

2. Although in the case of joint family property, it may not be necessary for the lender of money to see to the application of it, it is necessary for him to make due enquiry as to the necessity to borrow.—12 W. R. 478.—*See also* Sale 47.

3. When a necessity for part of a — is established, the Court may decree that the deed be set aside and plaintiff recover possession upon paying the amount legally taken up for necessary purposes recognized by law, or that the deed be set aside in proportion.—*Ib.*

4. The doctrine of the Common Law Courts in England, under which the cause of action in respect to money lent, with or without interest, accrues the moment the money is lent, does not apply to suits in the Indian Mofussil Courts.—14 W. R. 224.

5. Where money is lent repayable on demand, with interest payable at a certain rate, so long as the borrower observes his part of the contract by paying interest, and so long as he is not apprized of the lender's desire to have back his principal sum, there is no cause of action, and limitation does not begin to run.—*Ib.* *But see* 16 W. R. 164.

6. A lender is bound to enquire into the necessity for a — and to satisfy himself as well as he can. If he does so enquire and acts honestly, the real existence of an alleged and reasonably credited necessity is not a condition precedent to the validity of his charge. The presumption in such cases varies with circumstances, and is regulated by and dependent upon them.—(P. C.) 18 W. R. 81. *See* 19 W. R. 79.

See Bond 18, 21.
Contract 15, 38.
Debtor and Creditor.
Equitable Mortgage 1.
Guardian 6.
Hindoo Law (Alienation) 19.
" " (Coparcenary) 9.
" Widow 108, 117.
Interest 7, 8, 11, 12, 14, 18, 19, 34, 70, 76, 86, 88, 102.
Lien 4, 6.
Limitation (Act XIV of 1859) 274, 286.
Minor 24.
Money-Decree 21.
Mortgage 34, 52, 189, 251, 271.
Partnership 26.
Practice (Parties) 45.
Pre-emption 71.
Principal and Surety 28, 37.
Registration 99.
Sale 47.
" Law 17.
Small Cause Court 45.
Zur-i-peshgee Lease 15.

Local Investigation.

1. In a case where the issue is whether two persons bear the relation of man and wife, a Judge is not justified in going himself to the village where the parties live, in order to make enquiries among their neighbours; much less in holding such — on a Sunday and without due notice to the parties.—17 W. R. 230.

2. Where a — under s. 533 Act X of 1872 is instituted, it becomes part of the proceedings, and the party affected by it is entitled to be acquainted with the results of it and to have an opportunity of rebutting the deputed Magistrate's report if he thinks it necessary to do so.—21 W. R., Cr., 25.

See Ameen.
Boundary 2, 19.
Enhancement 1.
Evidence (Documentary) 31.
Lakheraj 17.
Land Dispute 47.
Practice (Commissions).
Remand 1, 8, 9, 50.

Local Nuisance.

See Jurisdiction 21.

Locus Penitentiæ.

See Husband and Wife 27.

Lodging.

See Jurisdiction 456.
Public Policy 3.

Lord's Day Act.

See Sunday 2.

Loss of Caste.

See Caste 1, 2.
Guardian 14.
Libel 1.

Lost Document.

1. A suit was held to lie for the amount of an unsatisfied claim adjudged by a decree which was destroyed during the Mutiny, and the cause of action to date from the lost decree.—W. R. Sp. 301 (L. R. 83).

2. Lost record.—*See* Evidence 50, 55.

3. Lost or destroyed decree.—*See* Evidence (Documentary) 5.

4. Lost or destroyed deed.—*See* Evidence (Documentary) 52, 61, 104.

See Landlord and Tenant 27.
Practice (Execution of Decree) 22.
Principal and Surety 28.

Lost Property.

1. An owner's cause of action against a party in possession of — arises from the date of the latter's refusal to restore it; and a suit to recover it must be brought in the district in which it is found.—9 W. R. 586.

Lotbundee.

See Evidence (Documentary) 117.

Lottery.

See Gambling 1.

Lunatic.

1. A — is not incapacitated from suing to obtain redress for injury, or of verifying a plaint if he can understand it. —W. R. Sp. 268 (L. R. 51).

2. The Court of the Judicial Commissioner of Assam is the *Civil Court* contemplated by s. 29 Act XL of 1858.—W. R. Sp., Mis., 34.

3. The detention of a person placed in a — Asylum under s. 390 Act XXV of 1861, after the recovery of his reason, is wrongful but not illegal.—1 Hyde 173.

4. The application for an enquiry under Act XXXV of 1858 should be verified and proper notice given to the alleged — or his friends in case of necessity. Mode of examining him.—5 W. R., Mis., 54; 7 W. R. 267; 15 W. R. 259.

5. The son of a — living under Mitacshara law, is not bound by a compromise entered into between the plaintiff and the Court of Wards as representing the —, from being heard for the protection of his own interests in a suit or appeal in which he has been regularly made a defendant or respondent.—6 W. R. 115.

6. The appointment of a Hindoo widow as manager of the estate of a — is always undesirable if any other suitable person can be found.—6 W. R., Mis., 52. *See* 19 W. R. 163.

7. A Collector appointed under s. 11 Act XXV of 1858 to take charge of the estate of a — cannot sue himself on behalf of the — but must appoint a manager for the purpose.—7 W. R. 5.

8. Although according to Hindoo Law a — has no rights of inheritance, he is not debarred from taking an estate duly conveyed to him.—*Ib.* *See* 19 W. R. 163.

9. S. 5 Act XXXV of 1858 never intended that an alleged — should be summoned into Court as a witness and examined by the vakeel of the person on whose petition an enquiry was instituted.—7 W. R. 246.

10. A Judge must pronounce an alleged — of unsound mind, before he can, under Act XXXV, order his property (or person) to be put in charge of somebody else.—8 W. R. 375. *See also* 15 W. R. 259.

11. Where a Judge makes an order under this Act without taking evidence, the High Court may set aside his order without remanding the case.—*Ib.*

12. A Magistrate rightly commits for trial a person charged with murder, whom he finds sane at the time of the preliminary investigation, although he was insane when he committed the act.—9 W. R., Cr., 23.

13. Procedure when a prisoner is found insane at the time of his trial.—*Ib.* *See also* 10 W. R., Cr., 37.

14. A written certificate of a Medical Officer is not sufficient evidence of a prisoner's insanity.—*Ib.*

15. A Judge has jurisdiction under s. 2 Act XXXV of 1858 to entertain an application for the appointment of a manager to the estate of an insane person who had been and was in a — Asylum situated in the district where the application was made, though his property was in a different district.—11 W. R. 109.

16. A Judge, in making an order under Act XXXV of 1858 for the care of the estate of a —, was held to have gone beyond the purview of the Act in specifying what that estate consisted of.—12 W. R. 518.

17. Act XXXV of 1858 contemplates only the question of lunacy or sanity at the time of the enquiry; there is no provision in the Act that the enquiry shall extend to the ascertainment of the period when the — first became of unsound mind. The report of an officer in such enquiry has not the effect of *res judicata* upon the issues between two parties who allege that the lunacy commenced at different periods.—(P. C.) 15 W. R., P. C., 1.

18. Where a petition from the mother of an alleged — was forwarded by the Collector to the Judge for orders, no application was held to be before the Judge under Act XXXV of 1858; for, if by the mother, it wanted verification: and if by the Collector, he was not her agent and did not move the Judge under s. 3, or if he acted under s. 19 or s. 27 Act IV of 1870, he needed the authority of the Court of Wards.—17 W. R. 180.

19. An enquiry into the state of mind of an alleged — should not be instituted under Act XXXV of 1858 without its being clearly shown to the Court that there is ground for supposing that the person is of unsound mind.—18 W. R. 326.

20. An adoptive mother, as next heir, was held entitled to the management of the estate of a —, in preference to an uterine brother.—18 W. R. 340.

21. In a suit against the Court of Wards, as guardian of a —, to foreclose a mortgage and obtain possession, leased upon a deed of *bye-bil-wuffa* executed by the mother as the then guardian of the — to provide means to meet an ancestral debt, the Lower Court gave plaintiff a decree, holding that the —, as such, had no *locus standi*, that his mother was sole heir, and that though she executed the deed as if on behalf of her son, yet it was not initiated on that account because it was executed in her proprietary and not her fiduciary character. *Held* that if the — was not the owner, the suit was worthless for the purpose of foreclosing the equity of redemption of the real owner who was no party to the suit; that as no issue was raised or suggested by either party as to the proprietary right of the —, the Lower Court was wrong in doing so for the first time in its judgment; that a Hindoo — may have property even though he is not capable of inheriting while a —, but he cannot make valid contracts binding either on himself or on his property, all dealings with his property being made by a guardian or manager to be appointed by the Supreme Civil Power; that, after the passing of Act XXXV of 1858, an appointment of a guardian or manager of the estate of a — could not be properly effected than as there prescribed; and that no *de facto* manager could have more power of aliening and encumbering than a *de jure* manager would have.—19 W. R. 163. *See* 24 W. R. 46, 25 W. R. 449.

22. With reference to ss. 232 and 425 Act X of 1872, where an accused person at his trial appears to the Sessions Judge to be of unsound mind, the trial of the issue of insanity is part of the trial of the accused, and ought to be tried by the jury and not by the Judge personally.—19 W. R., Cr., 15.

23. The issue as to whether the accused is of unsound mind at the time of the trial and incapable of properly making his defence, is preliminary to the issue as to whether the accused was insane at the time he committed the offence, and should, under s. 425 Act X of 1872, be first submitted to the jury.—19 W. R., Cr., 26.

24. A Judge in a matter of lunacy under Act XXXV of 1858 ought not to stop the proceedings on learning from

Lunatic (*continued*).

the medical officer that the alleged — is addicted to ganja-smoking, a form of intoxication believed by the Judge not to amount to lunacy, but should go on to satisfy himself as to whether the alleged — is incapable of managing his affairs.—20 W. R. 55.

25. It is only when a man has been adjudged a — as the result of proceedings and an enquiry held in due course of law (as provided by Act XXXV of 1858) that the Court obtains the authority to appoint a manager of his estate.—20 W. R. 477.

26. A person who was appointed manager of the affairs of a —, by consent obtained while she was of sound mind, and who is capable of making a defence on her behalf, is competent to represent her in a suit although not appointed as representative under the law.—22 W. R. 33.

27. A suit to recover compensation in respect of rents due according to the terms of a bond, may be brought in the name of a —, while he is yet alive, by the manager of his estate acting as his next friend, or, for arrears accruing after his death, by the successor of the —.—22 W. R. 200.

28. Unsoundness of mind taken by itself is not sufficient to bring a person within the meaning of the term — as used in Act XXXV of 1858, unless it would incapacitate him from managing his affairs; nor, on the other hand, will a person who is incapable of managing his affairs be a — unless that incapacity is produced by unsoundness of mind.—24 W. R. 124.

29. For the purposes of this Act, the observation of the patient by medical witnesses, between the date of petition and the date of actual hearing, would be sufficient for ascertaining his state of mind at the time of enquiry.—*Ib.*

See Arbitration 41.
Certificate 81.
Costs 105.
Court of Wards 6.
Insanity 7.
Onus Probandi 150.

Lurking House Trespass.

See Cumulative Sentences 2.
Splitting 1.

Maafee-birt.

A — tenure must be taken to mean a hereditary tenure.—(P. C.) 19 W. R. 211.

Madras Civil Service Annuity Fund.

Refund of excess subscriptions to the one-half value of plaintiff's annuity.—(P. C.) 4 W. R., P. C., 10 (P. C. R. 332).

Magistrate.

1. Magistrate as witness.—*See* Practice (Criminal Trials) 51.

2. A — as an Executive Officer is not bound to attend to a Judge's extra judicial observation not warranted by law.—17 W. R., Cr., 58.

See Bench of Magistrates.
Conviction 5.
Damages 68, 81, 87.
Declaratory Decree 83.
Deputy Magistrate 1.
Dismissal of Complaint 3.
Evidence 75.
Excise 1.
Fine 8.
Information 2.
Joint Magistrate 1.
Jurisdiction 21, 89, 126, 149, 158, 160, 162, 208, 211, 229, 244, 246, 369, 370, 381, 385, 386, 387, 402, 416, 417, 418, 428, 429, 449, 451, 452, 468, 478, 479, 480, 498, 504, 516.
See Municipal 11.
Pardon 2, 5.
Police 1, 3.
Practice (Commissions) 15.
" (Criminal Trials) 27, 28, 29, 62, 68.
Prosecutor 1.
Revival of Complaint 2, 3.

Mahajun.

See Privy Council 2.

Mahomedan.

1. Sale by grandmother to granddaughter.—W. R. F. B. 77.
2. Sales or gifts on bonds by females.—1 W. R. 79, (P. C.) 18 W. R. 166, 257.
3. Purchase by son in father's lifetime.—7 W. R. 489.

See Ancestral Property 4.
Benamee 17, 18, 21.
British Subject 1.
Certificate 12.
Champerty 12.
Compounding 1.
Gift 19, 21, 23, 24, 42.
High Court 154.
Husband and Wife 2, 10, 20, 23, 30, 32.
Limitation 68.
" (Act XIV of 1859) 102.
Mahomedan Law.
" Widow.
Maintenance 37.
Majority 8.
Marriage 15, 18, 34, 37, 39.
Minor 32.
Mortgage 24, 226.
Moveable Property 3.
Mutwallee.
Onus Probandi 209, 237*a*, 279.
Pension 1.
Personal Appearance 3.
Pre-emption 4, 26, 69.
Statute of Frauds 1, 2.
Succession 1.
Vendor and Purchaser 60, 61.
Will 1, 10, 12, 17, 19, 38, 67.

Mahomedan Law.

1. A Sheeya is not incapacitated by — from succeeding to a Soonnee.—Sev. 72.

2. A Soonnee is not incapacitated by — from marrying a Sheeya.—*Ib.*, 6 W. R. 88.

3. The application to Mahomedans of their own laws in cases other than those of inheritance, marriage, and caste (*e.g.* in case of gifts), is administering justice according to equity and good conscience.—W. R. Sp. 185.

4. If a child has been born to a father of a mother where there has been not a mere casual concubinage but a more permanent connection, and where there is no insurmountable obstacle to a marriage, according to the — the presumption is in favor of such marriage having taken place, and the mother and child are entitled to inherit.—(P. C.) 6 W. R., P. C., 52 (P. C. R. 157).

So also the acknowledgment of the legitimacy of a daughter affords a strong presumption in favor of the right of her mother to inherit.—(P. C.) 26 W. R. 26.

In like manner the acknowledgment by the father and by the whole family of the legitimacy of a son was held to raise some presumption of the marriage of his mother.—(P. C.) 26 W. R. 36.

5. Under — a female can sell or give away her property

MAHOMEDAN LAW (*continued*).

as she pleases, without the consent of her children.—1 W. R. 79.

6. A widow being entitled, according to the — of inheritance, to only one-fourth of the husband's property, is bound, if she claims the whole property, to show how she acquired it.—1 W. R. 123.

7. The — does not recognize representation in matters of succession.—1 W. R. 152.

8. According to —, where a man dies leaving no children, a sister's son can claim his inheritance after the widow has obtained her one-fourth share.—5 W. R. 23.

9. According to — a widow and two daughters are entitled between them to 19-24ths of the property of a deceased father and husband, in the proportion of one-eighth and two-thirds.—5 W. R. 221.

10. According to —, want of chastity in a daughter, before or after the death of her father, or whether before or after her marriage, is no impediment to her inheritance.—6 W. R. 303.

11. According to —, descendants of a paternal grandfather's brother are entitled to rank among residuaries, and, as such, are preferable heirs to grand-daughters.—8 W. R. 39.

12. According to — a legacy cannot be made to one of several heirs without the consent of the rest.—9 W. R. 257.

13. According to — a posthumous son has a legal share in his father's property.—*Ib.*

14. An adopted son cannot inherit among Mahomedans.—9 W. R. 502.

15. Under — the daughters of a deceased brother of a person who has demised, cannot take any share of such person's property so long as a brother and sister, or only a brother, survives.—10 W. R. 306.

A sister being entitled to her deceased brother's share.—17 W. R. 140.

16. Where surviving kindred are related in like degree to a deceased party, the males are entitled under — to a double share of the inheritance.—10 W. R. 315.

17. Under the — a widow's title to succeed to her husband's estate is not barred by the fact of her being childless.—10 W. R. 462.

18. Mental derangement is no impediment to succession under the —.—11 W. R. 212.

19. Three different kinds of heirs are recognized by the —, (1) sharers, (2) residuaries, and (3) distant kindred. Where there are no residuaries, the principle of *return* provides that the surplus of the shares of the sharers shall revert to them in proportion to their shares, except in the case of husband and wife; next are the "distant kindred."—11 W. R. 220.

The succession of residuaries in their own right is as unlimited in the collateral as in the direct line where it is expressly said to be how high and how low soever.—21 W. R. 371.

20. There is no rule of — which empowers an elder brother in managing the family property acting or assuming to act on behalf of an infant brother or sister, to sell the share of such infant in order to pay family debts, or which will enable the purchaser to defend his title by showing that he purchased *bonâ fide*.—12 W. R. 337.

21. A plaintiff who had not undergone circumcision, and who could scarcely be called a Mahomedan, was allowed to carry on his case as the illegitimate son of a Mahomedan, his mother being admittedly a Mahomedan.—12 W. R. 512, (*affirmed by P. C.*) 21 W. R. 113.

22. A child of fornication or adultery has no parentage, and cannot under the — inherit the estate of an illegitimate brother.—*Ib.* *See also* 14 W. R. 125.

23. Where a party has a known heir, his acknowledgment in favor of another is not to be credited under the —, the *nusub* not being established.—*Ib.* *See also* 14 W. R. 125.

24. According to —, illegitimate sons can claim no relation with their father's family.—13 W. R. 265.

25. According to —, 90 years is the least period which must elapse before the estate of a missing person can be inherited and alienated by his heirs.—14 W. R. 293.

26. But where plaintiff was in possession under a conveyance from the heirs, who did not dispute his title, defendant, who could not prove the mokurruree which he set up, was not allowed to plead that, as 90 years had not elapsed since the proprietor's disappearance, his heirs could not inherit.—*Ib.*

27. Under the —, such an office as that of *Sujjada-nusheen* should descend to persons in the male line (those descended from females being regarded as not belonging to the family, but strangers), and, if once diverted for sufficient cause (*e.g.* default of male issue), may be brought back into the line of a previous holder where the person claiming under that holder is a descendant in the female line.—16 W. R. 193.

28. According to — a residuary heir should not be allowed lightly to disturb the long possession by a widow of her husband's estate.—(P. C.) 17 W. R. 108.

29. According to — there may be a renunciation of a right to inherit, implied from the ceasing or desisting from prosecuting a claim.—(P. C.) *Ib.* *See* 22 W. R. 267.

30. As a general rule, a widow takes no share "in the return," *i.e.* on failure of residuaries; but some authorities seem to hold that, if there are no heirs by blood alive, the widow takes the whole estate to the exclusion of the fisc.—(P. C.) *Ib.*

31. In a dispute between two grandsons as to proprietary right in a village registered in a name of a member of the elder branch of the family, the *ratio decidendi* according to which the legal presumption was in favor of one grandson claiming against another, and the *onus probandi* on the one claiming to be sole possessor, was held more consistent with equity and common sense than requiring the party who claims a joint interest to prove that the registered proprietor had accounted to him for his proportionate share of the profits.—(P. C.) 17 W. R. 185.

32. The question of legal necessity does not necessarily arise in cases of sale by a guardian under the —, though it may properly be an element for consideration when the conduct of the guardian is called in question. The — looks to the benefit of the minor, and permits the guardian to dispose of moveable property if it be for the benefit of the minor.—17 W. R. 238.

33. In this case a sale made to carry on important legislation was held *bonâ fide* and for the benefit of the minor.—*Ib.*

34. Under the — which governs members of the Sheeya sect, a widow having no child alive by her deceased husband inherits nothing of the land which he has left.—20 W. R. 297.

35. According to —, the acknowledgment of illegitimate children as sons and heirs does not constitute them brothers and heirs to each other.—(P. C.) 21 W. R. 113.

36. In the absence of evidence to the contrary, the presumption of — is that a girl attains puberty when she reaches the age of 9 years. The Soonnees hold marriages by minors to be voidable only (*i.e.* complete unless avoided) by dissent to be declared by the girl as soon as puberty is developed. The Sheeyas, on the other hand, hold that they are *fazoolee* only and incomplete until ratified by assent. The marriage of a minor is binding and irrevocable if contracted by the father or grandfather, but not when contracted by guardians of a lower degree, as the mother or grandmother, who can only contract a *fazoolee* marriage. A *fazoolee* marriage requires the assent of the minor, after attaining puberty and mature understanding, to perfect it; there being evidence either of express assent or of facts from which it may be presumed. Unless the assent of a girl after attaining puberty can be shown or presumed, the marriage is imperfect, and can create no rights or obligations.—(P. C.) 26 W. R. 26.

See Bye-Mokasa.
Certificate 54.
Deed of Sale 9.
Disclaimer 1.
Divorce 1, 2, 3, 4, 5, 6, 8, 9, 10.
Dower 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37.
Dowry.
Endowment 1, 5, 6, 7, 8, 12, 13, 14, 15, 18, 48, 47, 48, 51, 52, 53, 54, 55.
Evidence 4.
Gift 2, 3, 8, 11, 12, 13, 14, 15, 16, 19, 23, 24, 29, 30, 35, 36, 38, 42, 44, 45, 51, 52, 56.
Guardian 5, 10, 18, 26, 27, 31, 32.

Mahomedan Law (*continued*).

See **Husband and Wife 2, 10, 11, 32.**
Illegitimate Child 1.
Interest 70.
Jurisdiction 464.
Legitimacy 2, 3, 4, 5, 6, 7, 10.
Mahomedan.
Majority 3, 6, 8.
Marriage 2, 7, 8, 9, 12, 18, 19, 22, 25, 31, 33.
Mortgage 24, 226.
Onus Probandi 16.
Primogeniture 2.
Privy Council 5.
Representative 3.
Res Judicata 64.
Small Cause Court 13.
Succession 1.
Vendor and Purchaser 44, 52, 55.
Will 10, 12, 17, 26, 27, 35, 66, 69.

Mahomedan Widow.

See Dower.
Endowment 76.
Gift 42.
Mahomedan Law 6, 8, 9, 17, 28, 30, 34.
Onus Probandi 154.
Sale 20, 27.

Maintenance.

1. Jurisdiction of Small Cause Court in suits for —.—*See* Jurisdiction 18, 234, 281.

2. *Quære.* Whether a money allowance for — can be taken in execution of a decree.—1 Hay 583.

3. Where the — of a Hindoo widow was not made by her deceased husband dependent on her living with his family, she is entitled to it notwithstanding she leave the house of his family and go to that of her father.—Marshall 497. *See also* 6 W. R. 37, 9 W. R. 152. (*Over-ruled*), *see* 16 *post*, (*but affirmed by P. C.*) *see* 20 W. R. 21.

4. Where a Hindoo father and son lived joint in food and worship but separate in estate, the widow of the son was held to have no legal claim upon the father for —.—2 Hyde 103.

5. A right to — bequeathed to a person is not affected by any private arrangement by the testator's family who are equally liable to pay the — as a charge on the testator's estate.—W. R. Sp. 3.

6. A person must be presumed to have waived a right of — bequeathed to him, if he has resided in, and been supported by, the testator's family, and has made no claim for — for 12 years after the testator's death.—*Ib.*

7. A Hindoo woman holding a decree for — against a person who has no other property besides the one of which the proceeds are in dispute, is entitled to preference over any other judgment-debtors.—2 W. R., Mis., 29.

8. A Hindoo widow's right to — out of lands which belonged to her husband and have devolved on her son, is a purely personal right which cannot be sold in execution of decree or otherwise transferred.—5 W. R. 111. *See also* 7 W. R. 311.

9. S. 316 Act XXV of 1861 does not bar a suit by a wife against her husband for —.—6 W. R. 57.

10. According to Hindoo law, a wife who, without her husband's sanction, leaves him to live with her own family, has no right to ask — from her husband.—6 W. R. 115.

11. Inability of husband and wife to agree to live together is no ground for decreeing a separate — to the wife.—6 W. R., Cr., 59.

12. The fact of having been long supported by a person, or purchased as a slave or *chella*, does not entitle one to perpetual —.—7 W. R. 137.

13. Where the Magistrate, under s. 316 Act XXV of 1861, orders a person to make a monthly allowance for — of an illegitimate child, there is no conviction of an offence, and consequently no appeal lies from the order of the Magistrate.—7 W. R., Cr., 10.

14. An order made by the Magistrate, under s. 316, must be founded upon proof in the same proceedings, and not upon knowledge acquired by him in some other case.—8 W. R., Cr., 67.

15. A Hindoo widow's — may, on sufficient cause shown, be either increased or decreased. The increase should be made from date of suit.—9 W. R. 152.

16. Under the law current in Bengal, when a Hindoo dies in his father's lifetime leaving no estate whatever, his widow has no legal right to receive from her father-in-law a pecuniary allowance in lieu of — so long as she elects to live with her own father.—(F. B.) 9 W. R. 413, 10 W. R. F. B. 89. *See also* 10 W. R. 359, 15 W. R. 498, 24 W. R. 474. *But see* 22 W. R. 293.

17. Where a Hindoo husband does not object to his wife leaving his house to carry on an independent calling, or give her notice to return, she is, when desirous of returning, entitled to —.—9 W. R. 475.

18. Questions arising between the holder of a decree for — and the heirs of the judgment-debtor cannot be determined in execution. 10 W. R. 93. *See also* 18 W. R. 473.

Quære. As to instalments.—*Ib.*

19. The *quantum* of — to be awarded is a question with which the Courts in India are best able to deal, and the Privy Council will not interfere with the discretion exercised in this respect, except on strong grounds.—(P. C.) 10 W. R., P. C., 17.

20. Where plaintiff sued to recover balance due of an allowance for — under a *moshairah potro* executed by defendant and his adopting mother, in consequence of plaintiff's having been deprived of the future inheritance of his deceased wife who was the grand-daughter of defendant's adoptive father,—*Held* that the deed disclosed good and sufficient consideration for the promise to pay, and that defendant was bound to pay the allowance.—11 W. R. 415.

21. Where A is proved to be the natural son of his deceased father B, a Hindoo gentleman, and to have been recognized by B as such, it is not essential to A's title to — out of B's estate that he should be shown to have been born in the house of his father, or of a concubine possessing a peculiar *status* therein.—(P. C.) 11 W. R., P. C., 6.

22. There is no authority in the Hindoo law or the Jain Shasters for the position that a father is obliged to support a grown-up son after he has attained majority.—12 W. R. 494.

23. Where a Criminal Court ordered a man to pay a sum of money towards the — of his wife and children, and a Civil Court subsequently, on the suit of the husband for restoration of conjugal rights, gave the husband a decree, it was held that the order of the Criminal Court ceased to have any effect from the date of the decree of the Civil Court.—13 W. R., Cr., 52.

24. When the conduct of a Hindoo husband is such as to render it impossible for his wife to live with him any longer consistently with her self-respect and religious feelings, and she lives apart and chastely, she is entitled to —.—14 W. R. 451.

25. The question of the adequacy of the — granted to widows and daughters must depend in each case on its own peculiar circumstances.—15 W. R. 73.

How the amount was determined in the case of a widow.—25 W. R. 474.

26. A decree for — to be paid at a certain rate per month stands on the same footing as a decree ordering payment by instalments, where the decree-holder may apply for execution from time to time as the instalments become due, and the Court may on such application issue execution under ss. 201 and 212 Act VIII and s. 15 Act XXIII of 1861.—15 W. R. 128.

27. Under Hindoo law a grandson is not entitled to —. 15 W. R. 498.

28. Arrears of — due to a Hindoo widow at her death, do not necessarily revert to the estate from which they were to be derived, on the ground that they were not separated from the *corpus* of the estate during her life.—16 W. R. 76.

29. A suit by wife against husband will not lie for — based on a deed of separation and cessation of connubial intercourse, which taken by itself is opposed to public policy.—16 W. R. 250.

30. The Deputy Magistrate's order in this case was

MAINTENANCE (*continued*).

quashed as illegal, he having held that the wife was not entitled to — under s. 316 Act XXV of 1861, and yet, without evidence of the husband's unwillingness (but the contrary) to support his infant children, directed him to pay her a monthly sum as — for the children.—16 W. R., Cr., 72.

31. There seems no authority for the proposition that, on the death of junior members of a family to whom certain property was awarded for —, not only the property so awarded, but the profits made upon it by the decree, revert to the donor.—17 W. R. 129.

32. Whether a *Sagaye* wife is entitled to —.—17W. R.230.

33. In a suit for — from an elder brother, plaintiff has a right to a finding as to what amount and kind of — he is entitled to even though it be less than his claim.—17 W. R. 411.

34. A decision of the Civil Court, refusing to enforce a contract or agreement against a man for the — of a woman, cannot conclude either the woman from applying, or a Magistrate from making an order, under s. 316 Act XXV of 1861, for the — of their illegitimate daughter. —17 W. R., Cr., 49.

35. A decree for — creates a debt payable out of the estate and liable to be met out of any property passing to the son. When, from circumstances, the original allowance ought not to be continued, application for review should be made to the Court making the decree. The propriety of the sum allowed cannot be questioned in execution.—18 W. R. 473.

36. Where a decree for — is passed in favor of a childless Hindoo widow against the assets of her husband, the party in possession of those assets is liable to pay that —. —20 W. R. 196.

37. It cannot be said that, up to the time when the father allows his daughter to go to the house of her husband, and when, by the customs of the Hindoo society, she would probably go, the husband incurs any liability in respect of her — under s. 536 Act X of 1872.—22 W. R., Cr., 30.

Quære. Whether a Mahomedan husband is liable for the — of his wife who has not attained the age of puberty, as long as she remains under her father's roof.—24 W. R., Cr., 44.

38. A person entitled to — out of an estate may claim to have a charge for such — upon the estate into whosesoever hands the property may go.—23 W. R. 33.

39. Unless a husband refuses to maintain his wife in his house, or has been guilty of acts of cruelty which would justify her in leaving his protection, she is not entitled to — while living apart from her husband, mere unkindness or neglect short of cruelty not being, under Hindoo law, a sufficient justification for a wife's leaving her husband's house.—(O. J.) 24 W. R. 377.

40. A Civil Court has power to fix the rate of — payable by a husband to his wife, where she, for lawful cause, is residing apart from him, and to make an order that — at that rate shall be paid in future, subject to be set aside or modified according to circumstances.—24 W. R. 428.

41. Cases of — under s. 536 Act X of 1872 are not in the nature of summary trials, but require the usual procedure laid down for summons cases and the recording of the evidence in full as required by s. 335.—24 W. R., Cr., 61.

42. In making an order for — under s. 536, a Magistrate has no power to take security for possible default.—24 W. R., Cr., 72.

See **Certificate 42.**
Champerty.
Construction 68.
Disclaimer 1.
Forfeiture 11, 22.
Gift 57.
Guardian 19.
Hindoo Law (Alienation) 6.
" " (Coparcenary) 38, 39.
" " (Inheritance and Succession) 81, 82, 96, 98.
" Widow 15, 20, 22, 26, 48, 55, 57, 59, 60, 63, 83, 84, 85, 86, 103, 104, 110, 112.

See **Husband and Wife 26, 82.**
Jurisdiction 18, 284, 281, 469.
Lease 15, 47.
Limitation 185.
" (Act XIV of 1859) 18, 81.
" (Reg. II of 1805) 5.
Mahomedan Law 38.
Maintenance Grant.
Onus Probandi 103, 121.
Pachoet 2.
Partition 10*a*, 24*b*.
Practice (Attachment) 8*a*, 23*a*, 44.
Ramnuggur.
Streedhun 5.
Vendor and Purchaser 24.
Will 49.

Maintenance Grant.

1. Land held as a — is resumable by the zemindar at the death of the grantees, whether it is in the hands of more immediate or more remote members of the family; the nature of such a grant being to make suitable provision for the immediate members while it prevents the zemindaree from being completely swallowed up by continual grants. —22 W. R. 225.

2. The successors of such grantees, paying rent to the zemindar, cannot be regarded as holding adversely to him.—*Ib.*

See Maintenance 20, 31.
Practice (Attachment) 23*a*.

Majority.

1. The age of — fixed by Reg. XXVI of 1793 for proprietors of revenue-paying estates, applies as well to a co-sharer as to the proprietor of an entire estate.—W. R. Sp. 83.

2. According to the Bengal school, in all matters unconnected with the possession of estates under Government, fifteen years is the age of — of male Hindoos.—1 W. R. 75. *See also* (P. C.) 25 W. R. 235. *See* 9 *post.*

3. Where a certificate of guardianship has been granted under Act XL of 1858, it is by the terms of that Act, and not by reference to Mahomedan or Hindoo law, that the period at which the ward is to be considered of full age is to be determined.—2 W. R. 217.

4. Discussion as to the limit of minority of Hindoos not being proprietors paying revenue to Government and as to the proper construction of s. 26 Act XL of 1858.—3 W. R. 50. *See* 9 *post* and (F. B.) 19 W. R. 110.

5. S. 2 Reg. XXVI of 1793 extends the term of minority of proprietors of revenue-paying estates from the end of the 15th to the end of the 18th year, in respect of all acts done by such proprietors, both as to matters connected with real estate, and matters of personal contract.—5 W. R. 2, 7 W. R. 502.

6. The age of — fixed by the same Regulation applies to proprietors out of, as well as those in, possession; and is not over-ridden by the Mahomedan law with reference to the validity of the marriage contract.—5 W. R. 4. *See also* (P. C.) 23 W. R. 208.

7. The holder of an estate paying revenue direct to Government, whether the settlement of that estate be temporary or permanent, is a *proprietor* (within the meaning of s. 3 Reg. XXVI of 1793) whose minority extends to the end of the 18th year.—7 W. R. 181.

8. In the case of Mahomedans not subject to the Court of Wards, the limit of minority is at least 16 years.—8 W. R. 301.

9. Every person (not being a European British subject) who has not attained the age of 18 years, is a minor for the purposes of Act XL of 1858, even though proceedings are not taken in the Civil Court for the care of his person or the protection of his property. If he is a proprietor of an estate paying revenue direct to Government, and has been taken under the protection of the Court of Wards,

MAJORITY (*continued*).

he is still a minor up to the age of 18 years according to s. 2 Reg. XXVI of 1793.—(F. B.) 10 W. R. F. B. 36. *See also* 11 W. R. 235, 446, 561; 15 W. R. 451. *See* (F. B.) 19 W. R. 110.

10. The age of — of a Hindoo resident and domiciled within the town of Calcutta, and not possessed of property in the Mofussil, is the end of 15 years.—(F. B.) 19 W. R. 110.

11. The age of — of a Hindoo resident and domiciled within the town of Calcutta, but possessing lands in the Mofussil paying revenue to Government, is the end of 15 years.—(F. B.) 24 W. R. 464.

See Guardian 8.
Hindoo Law (Adoption) 76.
Limitation 120.
" (Act XIV of 1859) 23, 34.
Maintenance 22.
Onus Probandi 71.

Mala Fides.

See Abetment 2.
Damages 70, 86.
Husband and Wife 36.
Mortgage 201.
Onus Probandi 174.
Sale 70.

Malice.

See Damages 21, 70, 86.
Libel 1.
Mala Fides.
Malicious Prosecution.
Practice (Suit) 57.

Malicious Prosecution.

1. The mere failure to obtain a conviction on a criminal charge against a person does not entitle him to sue for false and —. In order to maintain such a suit he must show that the criminal charge was instituted maliciously and without probable cause.—3 W. R. 169; 5 W. R. 134, 282; 10 W. R. 439; 13 W. R. 276; 14 W. R. 339, 425; 17 W. R. 101, (P. C.) 283; 20 W. R. 177; (O. J) 22 W. R. 138.

2. A charge of trespass against persons in possession of land decreed to another, whether notice of the decree has been given to the alleged trespassers or not, is not necessarily "frivolous, vexatious, and false."—3 W. R., Cr., 32.

3. When a party has been acquitted of a criminal charge preferred against him, the presumption is that the charge is malicious; and it is for the accuser, when in his turn a defendant, to rebut that charge, and not for the accused (as plaintiff) to bring strict proof of malice.—6 W. R. 29, 92. *See* 11 W. R. 534, 12 W. R. 402. *But see* 14 W. R. 425.

4. In an action against N for bringing a false and malicious charge, and against M as instigator, failure to prove instigation on the part of M does not affect the claim against N, who, if the charge proves false, must still show reasonable cause for bringing it, otherwise malice is inferred.—11 W. R. 42, 20 W. R. 177. *See* 12 W. R. 402, 14 W. R. 425.

5. A suit cannot be brought for a — when the prosecution ends in the conviction of the person against whom it is directed.—13 W. R. 118.

See Damages 47, 55, 70, 82, 91, 92.
Defamation 1, 9, 13, 14, 15, 18.
Jurisdiction 296, 811.
Limitation (Act XIV of 1859) 190.
Special Appeal 98, 99.

Malikhana.

1. Maliks receiving — cannot retain possession.—1 W. R. 82.

2. The payment of — is not the only method in which a proprietary right can be recognized; but the keeping of the — in deposit for the benefit of the recorded proprietors generally, is a sufficient recognition of a sharer's proprietary right.—17 W. R. 145. *See* 22 W. R. 520.

3. Where an arrangement has been effected by which — is to be paid not in cash but as a set-off against the rent payable to be deducted therefrom, and it is not shown that the right to such — has been alienated, the fact of its not having been paid in cash for twelve years is not a bar to the claim of the maliks for the —.—21 W. R. 88.

See Limitation 190, 191, 288.
" (Act XIV of 1859) 49, 122, 158.
Shikmee 7.
Special Appeal 89.

Manager.

1. A — has no authority to borrow money on a bond which does not recite the purpose for which it is required.—6 W. R. 43.

2. A will that provides for an heir becoming disinherited on changing his religion, does not apply to the case of a Hindoo becoming a Vedantist, nor does that form of Hindooism incapacitate him from being a —.—8 W. R. 278.

3. Where an elder son, the — of an estate, is charged with neglect to the injury of a minor son, the Judge is bound to enquire.—*Ib.*

4. Where any of the managers appointed by a will are unable or refuse to act, it does not follow that others must be brought in their stead.—*Ib.*

5. A — becoming incapable, as Vedantist, of performing ceremonies contemplated in a will, may make over the requisite expenses to any one concerned.—*Ib.*

6. Duties of a — appointed by the Collector under s. 12 Act XL of 1858 and of a — acting under the Court of Wards.—10 W. R. 273.

7. A — of a family estate who receives the rents has no power to sell the property of an adult member.—10 W. R. 303.

8. Decree-holders seeking *khas* possession of property already in possession of a Surburakar or —, should apply to the Court which appointed him for his removal.—10 W. R. 444.

9. A sale by a — with necessity may be valid, although the vendor does not describe himself as vendor.—11 W. R. 20, 18 W. R. 81 (*foot-note*).

10. Where the trusts of — and guardian are vested in different persons, an action instituted on behalf of the minor with the sanction of the Court of Wards is properly brought by the —.—16 W. R. 231.

11. The — of an estate under a *safeenamah* on behalf of B, cannot, without special authority from B, represent him in any suit or charge him with the costs of the defence of an action brought against him.—16 W. R. 310.

12. One — under Act XL of 1858 cannot shift the responsibility from himself and resign the appointment, and another take it up without the provisions of s. 6 being duly carried out.—17 W. R. 269.

13. In a suit to recover a share of family property alleged to have been in the possession of plaintiff's step-brother who held it on his behalf as —,—*Held* that it was for plaintiff to prove this allegation, and that the fact of his having brought his suit within 3 years from the date of his majority was not sufficient to save his claim from limitation unless he could show that his cause of action accrued during his minority.—19 W. R. 425.

14. Where a suit was brought by a — as plaintiff, and not by the minors through the — of their property as next friend as provided by s. 69 Act IV of 1870 (B. C.), it was considered very doubtful how far the High Court had the power to alter the plaint and give it the shape which it ought to have had if the minors were to be the plaintiffs.—20 W. R. 453.

See Appeal 71, 86, 146, 158, 195.
Attached Property 7.
Banker 2, 3.
Benamee 9.
Certificate 45, 113.

MANAGER (*continued*).

Construction 59.
Costs 37, 105.
Endowment 29, 45, 50, 60,
Guardian 18.
Hindoo Law (Adoption) 42.
,, ,, (Alienation) 13.
,, ,, (Coparcenary) 1, 5, 6, 9, 18, 21, 23, 29, 36, 59, 64, 96.
,, ,, (Religious Ceremonies) 11.
,, Widow 73, 76.
Injunction 3.
Joint Stock Company 6.
Jurisdiction 255, 269, 304, 400, 447, 495, 511.
Lakheraj 21.
Land Dispute 57.
Lease 81.
Limitation 198.
Lunatic 6, 7, 15, 20, 21, 25, 26, 27.
Minor 3, 4, 5, 18, 29, 35, 45.
Mokurruree Tenure 27.
Onus Probandi 108.
Partnership 25, 26, 30.
Practice (Attachment) 13, 36, 43, 45, 57, 59, 61, 70.
,, (Execution of Decree) 5, 7, 114, 194, 222, 252.
Principal and Agent 2, 36, 57.
Privy Council 64.
Purchase-money 1.
Relinquishment 14.
Right to Sue 16.
Sale Law (Act I of 1845) 7.
,, ,, (Act XI of 1859) 24.
Summary Order 1.

Mandamus.

1. The High Court has power to issue a — to the Calcutta Small Cause Court, compelling it to act conformably to law. —7 W. R. 228.
2. The High Court has the power which the Supreme Court had, to issue a writ of — in certain cases.— 17 W. R. 364.
3. A proceeding by way of — is a "proceeding in a civil case" within the meaning of the rule of 4th April 1866.—*Ib.*

See High Court 122.

Map.

See Ameen 17, 28.
Boundary 10, 13.
Declaratory Decree 12*a*.
Decree 20.
Evidence (Documentary) 11, 19, 69, 70, 88, 103, 109, 114, 127.
Julkur 1.
Limitation (Act XIV of 1859) 212, 213.
Mesne Profits 100.
Partition (Butwarra) 14.
Special Appeal 62.
Survey 7, 11, 14, 15, 17, 18, 21, 27, 28, 29, 30, 32, 33, 34.

Marine.

See Admiralty.
Merchant Seamen.
Salvage.
Shipping.

Market.

1. One's right of resort to a — does not give him a right to a stall, which must be acquired either by grant or by prescription.—11 W. R. 112.
2. S. 5 Reg. XXVII of 1793 has no application to a — or bazaar which did not exist in 1793.—15 W. R. 48, 16 W. R. 268, 21 W. R. 383.
3. There is nothing illegal in a contract, under a farming lease from the owner of a — to collect a portion of the proceeds of sale from persons exposing their goods for sale in the — under temporary sheds or in open places; and such collections are not in the nature of internal duties, but of rent for the use of the land.—21 W. R. 383.

See High Court 110, 124.
Jurisdiction 106, 197, 208, 372, 387, 462, 479.
Landlord and Tenant 8.

Market-overt.

See Fine 19.

Marriage

1. By a custom prevalent in Killah Pooteah in Zillah Cuttack, the son of a *phool-bibaho* — is entitled to succeed in default of sons by any superior —.—2 Hay 335.
2. According to Mahomedan law, continued open cohabitation, accompanied by declarations that the woman is the man's wife, and that the children, the issue of the cohabitation, are his children, or by conduct showing that he considered them to be so, is sufficient evidence from which to infer —. Even where the cohabitation has been casual only and there has been no acknowledgment of the woman as his wife, or the issue as his children, the fact of such cohabitation raises a presumption of — and that the children are legitimate; but in such case the presumption may be rebutted.—2 Hay 479 (Marshall 428).
3. By the custom of a Hindoo family no distinction is made between the issue of a *sagyi* — and a *byahi* —.— Marshall 644.
4. The — of an East Indian, domiciled in Calcutta, with the sister of his deceased wife, is not void under 5 and 6 Wm. IV. c. 45.—2 Hyde 65.
5. Proof of dishonest or fraudulent intent is necessary for a conviction under s. 496 Penal Code.—W. R. Sp., Cr., 13.
6. The mere act of allowing the — to take place at one's house does not amount to the abetment of an illegal —.—*Ib.*
7. According to Mahomedan law, mere continued cohabitation, without proof of — or of acknowledgment, is not sufficient to raise such a legal presumption of — as to legitimate the offspring; an acknowledgment may be presumed, but the presumption must be one of fact, and, as such, subject to the application of the ordinary rules of evidence. A subsequent —, so far from furnishing a ground for presuming a prior —, *primâ facie* at least excludes that presumption.—(P. C.) 7 W. R., P. C., 1 (P. C. R. 659). *See also* 25 W. R. 444.
8. The celebration of the seventh month of pregnancy, and the celebration of the birth of the son, are sufficient to prove the — and legitimacy of the son.—(P. C.) 7 W. R., P. C., 13 (P. C. R. 667).
9. Where there was no evidence of the celebration of any — ceremony, the fact of a woman having constantly lived as a married woman with her husband, and the fact of her children having lived as legitimate children with their parents, were held sufficient to raise the presumption of — and legitimacy.—1 W. R. 16.
10. According to the law and custom of — in Tipperah, the Rajah can legitimize his children born of a *Kuchua* by going through a — ceremony with the mother.—1 W. R. 194. *See also* 25 W. R. 404.
11. Mere cohabitation, without intent and agreement to enter into a binding contract of —, is not sufficient to constitute a Gondhorbo —.—*Ib.*
12. According to the Mahomedan law, a public acknowledgment of paternity raises a presumption of — between the person who makes it and the mother of the child,

MARRIAGE (*continued*).

throwing on the other side the *onus* of proving the impossibility of —.—3 W. R. 187.

13. According to the Hindoo law, the right of giving away a daughter in — may be delegated.—3 W. R. 193.

14. A Koolin Brahmin is not such a natural guardian of his daughter as her mother, and the want of a guardian's consent will not invalidate a — otherwise legal and proper. —3 W. R. 194.

15. The Hindoo law disentitling a widow to inherit on re— and — with a Mahomedan, does not apply to a widow who became a Mahomedan before her — with a Mahomedan. According to the principle laid down by s. 3 Act XXI of 1850 and s. 9 Reg. VII of 1832, conversion does not involve forfeiture of inheritance.—3 W. R. 206.

16. The — of a Hindoo minor is a legitimate cause of expense in regard to which his guardian can bind him.—3 W. R. 217.

17. A woman who does not use all reasonable means in her power to inform herself of the fact of her first husband's alleged demise, and contracts a second — within 16 months after co-habitation with her first husband, without disclosing the fact of the former — to her second husband, is liable to enhanced puishment under s. 495 Penal Code.—4 W. R., Cr., 25.

18. A *nikah* — falls within the purview of ss. 494 and 495 Act XLV of 1860; it is a well known and well established form of — amongst Mahomedans.—6 W. R., Cr., 60.

And the issue of a *nikah* — would be legitimate under the Mahomedan law.—18 W. R., Cr., 28.

19. A mere declaration by defendant in a mortgage-deed, that she was plaintiff's wife, would not be evidence of removal of the impediment under the Mahomedan law, to their re-marriage, created by divorce.—7 W. R. 268.

20. According to Hindoo law, the paternal grandmother, with the assent of the nearest male kinsman on the father's side, has a perpetual right over the stepmother to dispose of a minor in —.—7 W. R. 321.

21. The general Hindoo law being against a — between two distinct castes (*e.g.* Domes and Harees), local custom can alone sanction it.—9 W. R. 552.

22. According to Mahomedan law, a — contracted by the mother and grandmother of a minor was held to be lawful where a nearer guardian was precluded by absence from acting.—10 W. R. 12.

23. Ss. 2 and 5 Act XV of 1856 as applied in a case in which a Hindoo widow on the death, after her re—, of her son by her first husband, claimed his estate inherited from his father.—10 W. R. 34, 11 W. R. 82.

24. A Civil Court has no authority to make a declaration as to the validity or otherwise of a — where no question of property depends thereon.—11 W. R. 412. (*Over-ruled*) *See* 27 *post*.

25. A Mahomedan stepmother suing for a certificate under Act XXVII of 1860 on behalf of a minor son of her late husband, whose — with the minor's mother she fails to prove, is not deprived of any and every presumption admitted by the Mahomedan law in favor of the — and the son's legitimacy.—11 W. R. 426.

26. A — between two persons of the Soodra caste is not invalid because they belong to two different classes or divisions of that caste, or because the wife was the offspring of an illegitimate father.—(P. C.) 12 W. R., P. C., 41. *See* 23 W. R. 334.

27. A suit by a Hindoo mother as the guardian of her infant daughter, for a declaration that an alleged — of that daughter with the defendant was null and void, is cognizable by the Civil Courts under s. 1 Act VIII.—14 W. R. 132, 403. *See* 24 W. R. 207.

28. An action was held to lie for the recovery of money paid in consideration of a promise by defendant to give plaintiff his sister in —, which contract was broken and the girl married to another.—14 W. R. 154.

29. The facts relied on as giving jurisdiction to a Judge to pronounce a decree for dissolution of —, should be set out in the judgment.—14 W. R. 416.

30. In a suit for dissolution of —, when at the time of presentation of the petition the respondent does not reside within the jurisdiction of the Court, the jurisdiction of the Judge and the right of the parties to petition him will depend on where the parties "last resided together."—14 W. R. 416.

31. An agreement entered into by a Mahomedan with his wife at the time of —, that if he entered into a second — during her lifetime without her consent, she would be entitled to divorce herself and take a second husband, was held to be in consonance with the Mahomedan law.—15 W. R. 555.

32. The question as to the validity of the — of native Christian converts does not depend on the presence or otherwise of an ordained minister of religion.—16 W. R. 249.

33. Whether *rasoe bibaho* is a part of the — ceremony during which gifts to the bride are denominated *yautuka*, depends on the custom of the district in the caste to which the parties belong.—16 W. R. 304.

34. Where a man and woman after cohabiting for some time became Mahomedans and contracted a Mahomedan —, the man being already the husband in Christian — of a living Christian wife, the validity of the Mahomedan — was doubted.—(P. C.) 17 W. R. 77.

35. *Quære*. As to the effect of a *sagyi* —.—17 W. R. 230.

36. An agreement by which persons about to contract a — agree that such — shall become void on the happening of certain events (*e.g.* if the husband does not continue to reside within the wife's village), is invalid as being contrary to the policy of the Hindoo law of —.—20 W. R. 49.

37. If a Cazee was present at a Mahomedan — which is disputed with a show of probability, he should be called as a witness when the — is to be proved.—(P. C.) 20 W. R. 214.

38. The acknowledgment of a wife which the Mahomedan law requires as proof of — should be specific and definite. The mere keeping of a woman behind a purdah and treating her to outward semblance as a wife does not, in the absence of express declaration, constitute the *factum* of —. —20 W. R. 352.

39. Where the father of a Mahomedan girl, alleging her to be under age, gave her in — to plaintiff, who, suing for establishment of conjugal rights, failed on the ground that the girl was of age and had not consented to the contract, whereupon plaintiff now sued the father to recover as damages the value of presents made,—*Held* that, as the expense was not incurred in consequence of the breach of contract, but voluntarily, it could not be recovered as damages, and that plaintiff could only claim compensation for the loss of the girl as his wife; but that, if fraud were established, and plaintiff could show that the presents were a natural consequence of the negotiations and in conformity with general custom, he might recover damages to be determined by the circumstances.—22 W. R. 403.

40. An injunction under s. 93 Act VIII cannot be granted to restrain a Hindoo mother from giving her minor daughter in — to a third party pending the decision of a suit brought by petitioner for specific performance of a contract of — between his son and defendant's daughter.—24 W. R. 207.

41. A betrothal is not, according to the Mitacshara law, an actual and complete —, and the Court will not order specific performance (the girl not being a party to the suit) or compel the father to carry out a — with the person to whom the daughter had been betrothed.—(*Adopting* 7 Bombay H. C. Rep. 122) *Ib.*

42. A suit to enforce a contract of — cannot be entertained in the Civil Courts of this country.—24 W. R. 380.

See Certificate 16.
Divorce.
Dower.
Family Custom 2.
Gift 22.
Guardian 1, 5, 32.
Hindoo Law (Coparcenary) 86.
,, ,, (Inheritance and Succession) 9, 39.
,, Widow 99.
Husband and Wife 2, 22, 30, 38, 43.
Joutuck.
Jurisdiction 225.
Kidnapping 2.
Legitimacy 3, 6, 9.
Mahomedan Law 1, 2, 3, 4, 36.
Majority 6.

MARRIAGE (*continued*).

See Married Woman.
Minor 32.
Public Policy 4, 5.
Ramnuggur.
Seduction 2.
Self-acquired Property 8.
Streedhun 10.
Tipperah 4.

Married Woman.

Act III of 1874 (Married Women's Property Act) has not retrospective effect, and is not intended to effect contracts made before, and to alter the rights of persons or the obligations arising out of them.—(O. J.) 22 W. R. 175.

See Adultery.
Husband and Wife.
Seduction 1, 2.

Marshalling.

1. Of liabilities.—*See* Maintenance 7; Mortgage 75; Practice (Attachment) 6.
2. *Quære.* Should the doctrine of — of securities be introduced into India?—12 W. R. 114.

Master and Servant.

1. A servant is not liable, for misconduct, to forfeit such portion of his arrears of pay as had become due to him at the expiration of a month's service. The servant's misconduct may have justified his discharge in the middle of a month; if so, he is entitled to no pay for any portion of such month.—1 Hay 297.

2. Plaintiff sought to recover the value of bullocks hired by the defendant's gomashta to convey salt from the Government golahs, which, proving to be in excess of the quantity entered in the Government pass, was seized by the Salt Officials as contraband, and the bullocks were sold under Reg. X of 1819. *Held* that neither the want of authority on the part of the gomashta, nor even the ignorance of the salt-merchant (the principal defendant), could be pleaded to exonerate him from the consequences of his servant's fraudulent act in adding the contraband salt to the lawful quantity.—1 Hay 461.

3. Special contract. Alleged wrongful dismissal.—2 Hyde 166.

4. Alleged wrongful dismissal.—2 Hyde 172, 228.

5. Every employer or master has a right to dismiss his agent or servant at any time. The remedy for wrongful dismissal is by an action for damages.—2 W. R. 307.

6. A master cannot be compelled to keep in his service, and to continue to employ, a servant whose honesty he thinks he has reason to doubt.—4 W. R. 86.

7. A master who usually instructed his servant to buy goods upon credit, will be bound by his acts even when he has specially prohibited him from buying on credit.—6 W. R. 309.

8. A master is not criminally responsible for the wrongful act of a servant unless he can be shown to have expressly authorized it.—6 W. R., Cr., 60.

9. A master who accompanied a servant knowing the servant's intention to commit murder, and was present at the commission of the murder, is guilty as a principal although he struck no blow.—6 W. R., Cr., 83.

10. A master is not answerable for the tortious acts of his servants unless it be shown that they were authorized and subsequently ratified by him.—11 W. R. 101.

11. Where a mistress's authority for the carrying off of crops by her confidential servants was presumed.—*Ib.*

12. A dismissed servant is entitled to wages for any broken period during which he may have served, at the rate he was earning when dismissed.—16 W. R. 60.

13. An employé is entitled to wages notwithstanding his subsequent misconduct.—21 W. R. 405.

See Account 8.
Breach of Contract 18.
Breach of Contract of Service.
Government 1.
Jurisdiction 28, 392.
Limitation (Act XIV of 1859) 48, 114, 115, 138, 139, 227, 300, 306.
Occupancy 76.
Opium 1.
Practice (Commissions) 31.
,, (Suit) 57.
Principal and Agent 22.
,, ,, Surety 35.
Salt 5.
Special Appeal 103.
Theft 5.
Witness 60.

Maxims.

1. *Ignorantia legis non excusat* applicable to the Hindoo law of inheritance and adoption.—1 W. R. 62.
2. *Malitia supplet ætatem.*—*See* Child 1.
3. *Caveat emptor.*—*See* Purchase-Money 2; Vendor and Purchaser 22, 35, 45, 73.
4. *Testes ponderantur non numerentur.*—*See* Witness 38.
5. *In custodiâ legis.*—*See* Practice (Attachment) 16.
6. *Omnia presumuntur rite esse acta.*—*See* Evidence (Presumptions) 16, 26; Irregularity 20; Practice (Attachment) 50; Practice (Execution of Decree) 247.
7. *Factum valet.*—*See* Hindoo Widow 83.
8. *Sic utere tuo ut alienum non lædas.*—*See* Embankment 9; Negligence 3.
9. *In æquali jure.*—*See* Contribution 10*a*.
10. *Optimus interpres rerum usus.*—*See* Transferable Tenure 10.
11. *Nemo debet bis vexari pro eâdem causâ.*—*See* Res Judicata 17.
12. *Quicquid plantatur solo, solo cedit.*—*See* Land 1.

Measurement.

1. A ryot is not bound by a — under s. 26 Act X of 1859, made in his absence, unless he has received notice.—2 Hay 599 (Marshall 498).

2. The pergunnah standard of — must be clearly ascertained.—3 R. J. P. J. 149.

3. A Judge on appeal has power under s. 9 Act VI of 1862 (B. C.) to declare by what standard — is to be made.—W. R. Sp. (Act X) 59.

4. The owner of a fractional share of an estate has full power to measure.—1 W. R. 54 (3 R. J. P. J. 163). *See* 22 *post.*

5. Mode of determining custom where different or double standards of weight and — exist.—1 W. R. 224 (3 R. J. P. J. 275).

6. Under s. 9 Act VI of 1862 (B. C.) a zemindar can measure all the lands of his zemindaree whenever he pleases, unless he is restricted by any express engagement.—2 W. R. (Act X) 86; 8 W. R. 14, 149; 9 W. R. 151.

7. Ss. 9 and 10 Act VI of 1862 (B. C.) do not apply to the case of a neighbouring zemindar wronged by the Collector or the measuring zemindar.—2 W. R. (Act X) 101.

8. Under s. 11 of the same Act, the standard pole of the pergunnah is the standard of — to be used and ought to be assessed under a kubooleut or otherwise.—3 W. R. (Act X) 123.

9. To entitle a proprietor of land, under s. 9 Act VI of 1862 (B. C.), to ask the assistance of the Court in the — of his land, it is not necessary for him to show that he has actually received the rents of his estate, but only that he is in undoubted possession of the property.—4 W. R. (Act X) 16, 6 W. R. (Act X) 10, 9 W. R. 331. *See* 7 W. R. 415. *But see* 14 W. R. 121, 399.

10. S. 11 Act VI of 1862 (B. C.) does not preclude the use of the standard measuring rod of a tuppah.—4 W. R. (Act X) 32.

11. The abandonment to a grantee of all rights of — as

MEASUREMENT (*continued*).

against the ryots, with a view to resumption, does not restrain the right of — of the talook itself as against the grantee under Act VI of 1862 (B. C.).—5 W. R. (Act X) 47.

12. Where ryots combine to withhold necessary information, one suit may be brought against a number of them under s. 10 Act VI of 1862 (B. C.) for — by Collector of the tenure of each.—6 W. R. (Act X) 4.

13. A Collector's jurisdiction to allow a — where the proprietary right to the land is contested, is not barred by ss. 9 and 10 Act VI of 1862 (B. C.) if he is satisfied that the party seeking his assistance to measure is in receipt of the rents. If the Collector disallows the — on the ground that the applicant is not in receipt of the rents, the party aggrieved may appeal to the Civil Court.—6 W. R. (Act X) 13, 14; 14 W. R. 121, 399. *See* 7 W. R. 188.

But the fact of a party's land having been measured under s. 10 Act VI cannot take away his right to intervene under s. 77 Act X.—16 W. R. 51, 22 W. R. 508.

Nor is the intervenor deprived of that protection under Act VIII of 1869 (B. C.).—22 W. R. 508.

14. Petitions of appeal in such cases may be written on the stamp used for miscellaneous petitions. 6 W. R. (Act X) 13. *See* 8 W. R. 11.

14. It is not necessary that oral testimony should be taken in order to effect a —.—7 W. R. 43.

15. S. 10 Act VI of 1862 (B. C.) contemplates possession by the receipt of rents for those lands of which the — is required.—7 W. R. 96.

16. It applies to a proprietor who, from inability to ascertain who are liable to pay rent to him, cannot measure his estate; but not to a putneedar who seeks the Collector's assistance in a minute — only with a view to harass and oppress the ryots.—8 W. R. 11. *See also* 10 W. R. 361, 18 W. R. 332.

17. A single suit for — may be brought under s. 9 against several defendants having different rights and tenures.—8 W. R. 94.

18. S. 9 Act VI of 1862 (B. C.) does not give a proprietor the right of making a general survey or — of lakheraj lands held under an independent title.—10 W. R. 361; 11 W. R. 293, 414.

19. In an application under s. 9, a Collector has no jurisdiction to determine what is the standard pole of — of the pergunnah, or the standard pole by which the — is to be made; the direction contained in s. 11 being obligatory on the zemindars or persons making the —, and all questions arising out of the pole used being reserved for after proceedings taken upon the result of the —.—11 W. R. 510, 562; (*over-ruled by F. B.*) 11 W. R. F. B. 4.

20. A party applying under s. 10 Act VI of 1862 (B. C.) is entitled to measure only such lands as are comprised in his estate and for which he is entitled to receive rent.—14 W. R. 368.

21. An applicant should be required to put in some evidence of the necessity of his resorting to the special provisions of s. 10 Act VI of 1862 (B. C.).—15 W. R. 23, 522.

So as to s. 38 Act VIII of 1869 (B. C.).—21 W. R. 331.

22. An applicant under the same section must be the proprietor of the estate and not a shareholder in the proprietary body.—15 W. R. 522, 16 W. R. 126, 18 W. R. 332.

The same principle was held applicable to a suit for — of land under s. 37 Act VIII of 1869 (B. C.).—19 W. R. 280, 20 W. R. 385.

The applicant under s. 10 Act VI of 1862 (B. C.) must be the zemindar or the person entitled to receive the rents.—25 W. R. 92.

23. A — made by Government from whom plaintiff derives his title was, in the absence of evidence to the contrary, held as admissible in evidence of the area actually found under cultivation.—17 W. R. 258.

24. S. 10 Act VI of 1862 (B. C.) was intended to assist a proprietor to measure the lands comprised in his estate when he cannot ascertain who the ryots are, what lands are in their occupation, and what rents they have to pay; but not to enable him to enhance the rents of the ryots, to resume rent-free lands by throwing the *onus* on the lakherajdar to prove his rent-free holding.—18 W. R. 165.

25. Where an auction-purchaser at a sale for arrears of revenue applies, under s. 38 Act VIII of 1869 (B. C.), for — of the purchased estate, and no objection is made by the ryots on the score of his ability to measure, the applicant's right to measure is undoubted.—21 W. R. 103.

26. *Quære.* Whether the zemindar can insist upon a — simply by alleging inability to measure, and without proving such inability.—*Ib.*

27. Where an application is made to a Collector under s. 38 Act VIII of 1869 (B. C.) for the — of certain lands without any "special application" to him to determine the rates of rent, any proceedings regarding the rates of rent are inadmissible.—22 W. R. 480, 24 W. R. 272, 25 W. R. 136.

28. According to ss. 38 and 39, until the Collector has entered upon his enquiry, there is but one party concerned, and no proceeding in the shape of a suit or appeal can find place until after the Collector has completed his — and record.—22 W. R. 491.

29. It is for the Collector to decide as to the necessity or otherwise of a — of land under s. 10 Act VI of 1862 (B. C.); and when he has proceeded to measure the land and has ascertained tenures and rates of land, the tenants are bound by such —.—24 W. R. 142.

30. In a suit under s. 38 Act VIII of 1869 (B. C.), the Collector cannot delegate his powers to an Ameen or accept absolutely without reservation the whole report of that officer, and order assessment according to the rates found by him; such report being only part of the evidence to be taken into consideration.—24 W. R. 181.

31. The standard pole of — alluded to in s. 41 of the same Act must mean a standard officially known, *i.e.* known to the Collector.—*Ib.*

See Abatement 4, 18, 29, 30, 33.
Appeal 78, 112, 113, 128, 175, 200, 201.
Enhancement 98, 162, 182, 227, 255, 262.
Evidence (Documentary) 30, 35, 89.
Intervenor 56.
Jurisdiction 103, 134, 465.
Kubooleut 20.
Pottah 10.
Shipping 3.
Survey 2, 27.

Medical.

A Doctor's treating his patient before taking his fee will be no bar to his suing afterwards to recover his fee.—13 W. R. 96.

See Abetment 13.
Evidence (Medical).
Limitation (Act XIV of 1859) 257.

Meeras Pottah.

1. A — granted by a person holding only a temporary lease, is not valid against zemindar's right to possession on the expiration of grantor's lease.—W. R. Sp. 116.

2. Whether the grantee in the above case has any other right derived from a 12 years' occupancy of the land, is not a matter cognizable by the Civil Court.—*Ib.*

3. Effect of a decree in favor of one co-proprietor of a joint undivided talook suing alone to cancel a — granted during his minority and to recover his share of the property.—2 W. R. 325.

See Guardian 11.
Joinder of Parties 35.
Julkur 25.
Limitation 240.

Mercantile Usage.

Evidence of —.—(P. C.) 1 W. R., P. C., 8 (P. C. R. 357).

See Carrier 2.
Hoondee 6.

Merchant Seamen.

S. 111 Act I of 1859 applies only to the depositions of —.—1 Hyde 195.

Merger.

Quære. Whether the doctrine of — applies to lands in the Mofussil.—10 W. R. 15, 11 W. R. 485.

See Jurisdiction 471.
Occupancy 86.
Special Appeal 88.

Mesne Profits.

1. What is entitled to be recovered in a decree for —.— W. R. F. B. 40 (1 Hay 266, Marshall 122); 3 W. R., Mis., 25; 5 W. R., Mis., 35; 8 W. R. 103, 132; 9 W. R. 473; 13 W. R. 37; 17 W. R. 156. *See* 38, 70 *post*.

2. Limitation as to — recoverable both under s. 14 Reg. III of 1793 and cl. 16 s. 1 Act XIV of 1859.—(F. B.) W. R. F. B. 163 (L. R. 1). *See also* L. R. 134, 1 W. R. 83.

3. Suit for past — by Receiver who was also reversioner. —S. C. C. 26.

4. Where a party obtains a decree for possession, he may sue for the — of the estate decreed to him, for a period of 12 years prior to the decree, and he may delay to sue for it for 12 years after the decree.—1 Hay 178. (*Over-ruled*) *See* 2 *ante*.

5. A claim upon a bond is kept alive so long as payments on account of it continue to be made; and it cannot be that, in a claim for —, because the interference of the Civil Court was irregularly invoked, the plaintiff should be debarred the benefit of exemption from the penalty of default, which he would have had if he had made the demand privately and it had been acceded to.—*Ib.*

6. A party is, so long as the judgment declaring him to be the legal owner remains in force, the only party who is legally competent to sue for —.—*Ib.*

7. In a suit for — brought after a decree awarding possession to the plaintiff, the defendant cannot set up the title of a third person.—1 Hay 181 (Marshall 105).

8. In a suit for the assessment of —, the defendant cannot have credit for rents which he has left uncollected from the ryots.—1 Hay 277.

9. In estimating —, not merely the amount of rents actually received by the defendant, but also those which he might have received, and which can no longer be collected, ought to be charged against him. On the other hand, the reasonable expense of collecting the rents may be allowed to him; and if he has paid rent to the zemindar, allowance may be made for such payments. But he cannot be charged with payments of rent made by the plaintiff to the zemindar. —1 Hay 577 (Marshall 201). *See* 91 *post* and 16 W. R. 171.

10. In a suit for the — of a property decreed to the plaintiff, the defendant cannot plead that the — were appropriated, as assigned by their common ancestor, to the maintenance of a family idol from which the plaintiff derived no spiritual benefit.—2 Hay 212.

11. Suit for — disallowed because not brought for seven years after plaintiff's purchase.—2 Hay 622.

12. Collection charge should be deducted from —.— Sev. 4. *See also* 15 W. R. 203.

13. — awarded from the date when a compromise was legally declared to be binding, and not from the date of its execution.—Sev. 60*a*.

14. — awarded from the date of the plaintiff's suit for possession and —.—Sev. 60-1.

15. A putneedar is liable to the extent of — taken by him from land from which another party was dispossessed by the zemindar, whether the putneedar had or had not anything to do with the ouster of such party.—Sev. 310.

16. Interest on — awarded from the date the amount of — was ascertained and not from date of ouster.—Sev. 698. *See also* 11 W. R. 25. *But see* 14 W. R. 151.

17. Awarded against the actual wrong-doer alone, who ousted the plaintiff and enjoyed the profits of the estate.— Sev. 964.

18. A decree for possession does not, as a general rule, carry — with it.—W. R. Sp. 158. *See* 9 W. R. 590, *overruled* by 11 W. R. 83; 13 W. R. 412, 14 W. R. 397.

19. Where, during the pendency of a suit, a receiver is appointed at the instance of the defendant who is ultimately unsuccessful, and — are awarded to the plaintiff, if the latter is unwilling to a deduction being made for the expenses of the receiver, he should object in the Execution Department.—W. R. Sp. 247 (L. R. 21).

20. Where a former suit for possession was decreed with — from date of suit to date of recovery of possession, a further suit for — to date of former suit was held not barred.—W. R. Sp. 297.

In a suit for possession, however, in which — are expressly prayed, plaintiff is bound to put forward his whole claim for such profits, and is not entitled, according to s. 7 Act VIII, to reserve a portion to be made the subject of another suit.—25 W. R. 113.

21. A claim for possession and a claim for — may be brought separately or they may be united. When united, a separate stamp fee for — is not necessary.—W. R. Sp. 327.

22. The heirs of a lessee are liable for the — of an estate which he held on an invalid title.—W. R. Sp. 362 (L. R. 135).

23. When *mál* lands are fraudulently included by the lakhérajdar with lakheraj lands resumed by Government and afterwards settled with him, he and not Government is liable for —, and interest thereon is awardable from the date of suit, where the amount claimed is definite.— W. R. Sp. 380 (L. R. 153).

24. A claim for — may be enforced against the heirs of the original ejector.—W. R. Sp., Mis., 10.

25. Decree of Sudder Court estimating the amount of — from the average of two years as ascertained in a former suit (the evidence in the present suit being unsatisfactory on both sides) upheld.—(P. C.) 5 W. R., P. C., 125 (P. C. R. 88).

26. The Court cannot give more — than is claimed, although a greater amount may be proved.—(P. C.) 5 W. R., P. C., 127 (P. C. R. 91). *See also* 7 W. R. 140. *But see* 16 W. R. 302.

27. A presumption arises against a claim for — from non-claim for 7 years.—(P. C.) 7 W. R., P. C., 73 (P. C. R. 216).

28. In a suit for — where defendant, denying claim, does not dispute amount claimed, the Court may determine amount.—1 W. R. 54.

29. When a sale is set aside, the vendee alone is liable for — received and expended by him whilst in possession.— 1 W. R. 90. *See also* 7 W. R. 225.

30. — can only be awarded for 12 years before suit, *plus* the period of pendency of plaintiff's suit for possession.—*Ib.*

31. A *bonâ fide* lessee without title is liable for — during his wrongful possession.—1 W. R. 293. *See also* 8 W. R. 479, 10 W. R. 486.

32. A Court executing a decree for possession has no power to give — not awarded by the Court passing the decree.—1 W. R., Mis., 5; 3 W. R., Mis., 9; (F. B.) 6 W. R., Mis., 109; 11 W. R. 200; 13 W. R. 11; 15 W. R. 292; 16 W. R. 25; 25 W. R. 269, 327. *See* (F. B.) 9 W. R. 402.

33. A decision as to amount of — should not be given without examination of evidence filed by both parties.— 1 W. R., Mis., 6.

34. There is no ground for interfering with an order of a Judge directing execution of a decree for — estimated by conjecture, where the judgment-debtors, who have all the means of knowledge, steadily refuse to produce any trustworthy evidence as to the amount of the —.—1 W. R., Mis., 14.

35. Where the custom of collecting rents from *moostagirs* prevails, the *moostagiri* jumma is to be the basis of account of — to be recovered from a judgment-debtor.—1 W. R., Mis., 20. *See* 15 W. R. 469.

36. Before A can succeed in a suit for — against B on the ground of B's wrongful appropriation of the profits of howalas and neem-howalas, it must either be admitted or proved that A holds them. If he holds them as subordinate tenures in C's ousut talook, C should be made a party, and A's claim to the — decided in the presence of C, whether C denies or admits the existence within his ousut talook of A's alleged howalas and neem-howalas.—2 W. R., 188.

37. A judgment-creditor under a decree awarding a fixed sum for — "with costs and interest thereon till the date of liquidation," cannot recover — during the pendency nor subsequent to the decision of the suit.—2 W. R., Mis., 4.

38. Mode of calculating —.—2 W. R., Mis., 10; 3 W. R., Mis., 25, 30; 4 W. R., Mis., 23; 7 W. R. 78, 230; 8 W. R. 101, 172, 450; 9 W. R. 369, 374; 10 W. R. 209; 11 W. R.

Mesne Profits (*continued*).

461; 15 W. R. 258, 431; 17 W. R. 257; 21 W. R. 269; 22 W. R. 461; 23 W. R. 15, 108. *See* (*F. B.*) 70 *post.*

39. The value of trees cut down and appropriated by a judgment-debtor against whom a decree with — has been given, may be included in the — for which the judgment-debtor, whilst in wrongful possession, is liable.—2 W. R., Mis., 50.

40. A suit by one ryot against another on account of illegal appropriation of produce, is not a suit for — and therefore unaffected by s. 11 Act XXIII of 1861.—3 W. R. 1.

41. A plaintiff can obtain a decree for — only as far as his title is proved.—3 W. R. 36.

42. Cause of action for —.—*See* Limitation (Act XIV of 1859) 2, 66, 67, 232.

43. A *bonâ fide* lessee from a zemindar in possession is entitled to recover — on being evicted by an auction-purchaser at an execution sale.—3 W. R. 222. *See also* 8 W. R. 479.

44. On whom lies the *onus* of proving the actual amount of —.—3 W. R., Mis., 25; 21 W. R. 269.

45. On the appeal of the judgment-debtor, and without a cross-appeal by the creditor, the Appellate Court should not increase the amount of — decreed by the first Court to the creditor, but must determine whether there is any substance in the objections raised by the creditor.—3 W. R., Mis., 30.

46. A party fraudulently causing his property to be sold by another, has (after the reversal of such sale) no right of suit against that other for —, whether the purchaser was or was not a party to the fraud.—4 W. R. 8.

47. The sale by a decree-holder of the right to recover possession under one decree, does not affect his right to recover, under another decree, — collected during the time of the judgment-debtor's illegal occupancy.—4 W. R. 12.

48. A person declared by a decree to be in wrongful possession, is liable for the — which may be recovered from any property in his possession; no question as to how he was in possession, whether as heir, or in his own right, can be considered in such a case.—4 W. R., Mis., 7.

49. A set-off is not admissible in a suit for —, which is not a suit for a debt within the meaning of s. 121 Act VIII. —5 W. R. 160.

50. A decree-holder is entitled, as —, to whatever the wrong-doer has collected, though it be more than the decree-holder might have ordinarily collected.—5 W. R., Mis., 37.

Or to what it may be reasonably supposed the decree-holder might himself have collected during the time he was wrongfully kept out of possession.—22 W. R. 126. *See also* 24 W. R. 137.

51. A person who obtains a decree for possession of a chur, is entitled to — from the date of institution of the suit.—6 W. R. 76.

52. Principle applicable to — before institution of a suit of the above nature.—*Ib.*

53. In a suit for — the liability of the defendants as joint wrong-doers should be assessed in proportion to the amount of profits which each has derived from his wrongful possession.—6 W. R. 113, 230. *But see* 12 W. R. 354.

But all wrong-doers must be held liable for — who have combined together to keep another party out of possession. —23 W. R. 226.

54. Under s. 11 Act XXIII of 1861, — may be awarded for the period during which the decree-holder was executing the decree and was kept out of possession by the opposite party, although not included in the decree.—6 W. R., Mis., 13. *But see* (*F. B.*) 6 W. R., Mis., 109; 13 W. R. 11; 14 W. R. 485; 15 W. R. 292; (P. C.) 24 W. R. 193.

55. Where a plaintiff names by estimation a certain sum as the amount of —, and prays the Court to ascertain the amount definitely by local enquiry, he is entitled to receive the sum which the local enquiry may show to be really due. —6 W. R., Mis., 28.

56. A obtained a decree declaring him entitled to possession, under a mortgage, of one-third of the property in dispute with —. B subsequently obtained a decree against A and the other co-sharers for possession of the whole estate with — under another mortgage; but instead of taking full advantage of his decree, he received from all the co-sharers the amount due to him on the original transaction and restored the property to them. *Held* that A was entitled to recover — due to him under the original decree.—6 W. R., Mis., 28.

57. Under a decree for possession with — from 8th Bysack 1264, plaintiff was held entitled to the rents of 1263 and whatever else was realized by defendant after 8th Bysack 1264 during his wrongful possession.—6 W. R., Mis., 33.

58. The same decree being silent as to — after suit, the High Court could not, under s. 11 Act XXIII of 1861, give — not expressly provided for by the decree, but required the decree-holder to apply to the Court which made the decree, to amend its order regarding —.—*Ib. See* (F. B.) 6 W. R., Mis., 109; 13 W. R. 11; 16 W. R. 30; 19 W. R. 154; 22 W. R. 160; 25 W. R. 269.

Where a decree is silent touching interest or — subsequent to the institution of the suit, the Court executing the decree cannot under s. 11 assess or give execution for such interest or —; but the plaintiff is still at liberty to assert his right to such — in a separate suit.—(P. C.) 24 W. R. 193. *See also* 25 W. R. 215.

59. There is no provision of law which forbids a Court to accept oral testimony in support of the amount of — without the support of dakhilas.—6 W. R., Mis., 39.

60. A person cannot get rid of the effect of a decree for — by bringing a fresh suit to set aside a compromise entered into by his legal guardian where execution was taken out against him.—7 W. R. 77.

61. Where execution is ordered to be taken out against the estate of a deceased judgment-debtor and the property is sold, the representative of the debtor cannot be called to account in execution for the — of the property whilst in his hands.—7 W. R. 308. *But see* 15 W. R. 285.

62. S. 11 Act XXIII of 1861 only applies to the adjustment of — when it is determined that they are due, and does not bar a mortgagor, after a suit for redemption, from suing the mortgagee in possession for — payable between the date of suit and the execution of the decree where the question has not been left to be adjusted.—7 W. R. 364.

63. S. 11 Act XXIII does not bar a separate suit for — where there was no adjudication whatever in the matter of — in the former suit for possession.—7 W. R. 429. *See also* 12 W. R. 5.

64. Where — were payable but not decreed for want of evidence, the Court executing the decree was held not prevented from ascertaining the amount that had accrued between dates of decree and possession.—8 W. R. 42. *See* 11 W. R. 339.

65. — cannot be decreed against a durputneedar.— 8 W. R. 181.

66. A party in wrongful possession is liable for — from the date he withheld possession from the rightful owner.— 8 W. R. 450.

67. Where a decree provides for the ascertainment of — at the time of execution, the decree-holder is not concluded by what he may have said in his plaint as to the amount thereof.—9 W. R. 217.

68. Interest on — cannot be awarded for the period previous to such ascertainment, where the decree does not give interest on —.—*Ib.*

69. The admission by judgment-debtors of a certain rate of — concludes them in law.—9 W. R. 211.

70. The proper principle on which — are to be calculated when the person liable to pay them has not let the land to tenants but has himself occupied and cultivated it, growing on it indigo and other crops, is to ascertain what would have been a fair and reasonable rent for the land if it had been let to a tenant during the period of its unlawful occupation by the wrong-doer.—(F. B.) 9 W. R. 445. *See also* 9 W. R. 457; 10 W. R. 463; 11 W. R. 371, 533; 12 W. R. 52; 13 W. R. 37; 14 W. R. 294; 15 W. R. 258; 16 W. R. 21, 171; 17 W. R. 257, 348; 19 W. R. 125; 21 W. R. 246; 23 W. R. 386; 24 W. R. 271. *But see* 17 W. R. 156.

71. *Surinjamee* should be allowed upon the amount collected, and not upon the net proceeds coming to the zemindar.—9 W. R. 457.

72. A decree awarding immediate — at the rate admitted by defendant and larger — contingently on a higher rate being proved at the time of execution, was held to be irregular.—10 W. R. 24.

73. So far as s. 11 Act XXIII of 1861 (read in connection with ss. 196 and 197 Act VIII) operates to deprive Civil Courts of the jurisdiction to entertain a claim for damages put forward by a plaintiff, it applies solely to damages

MESNE PROFITS (*continued*).

sought in the character of — which have been already awarded by a decree of a Civil Court in a previous suit.—10 W. R. 62. *See also* 11 W. R. 339, 13 W. R. 11.

74. A decree for restitution of possession includes restitution of —.—10 W. R. 131 (adopting F. B. 9 W. R. 402); 23 W. R. 441. *See* 11 W. R. 389.

75. No difference should be made between — paid in kind and — paid in cash, but the value of both should be calculated in specie and the usual rate of interest allowed.—10 W. R. 209.

76. A decree in a suit under s. 15 Act XIV of 1859 for recovery of possession in favor of plaintiff, is sufficient *primâ facie* evidence of his title to warrant a decree for —.—11 W. R. 83.

77. Where about the time that plaintiff obtained a decree for land and —, a third party got possession in satisfaction of some other claim,—*Held* that, as plaintiff might under s. 223 Act VIII have executed his decree, defendant was not liable for the — for the period during which he was kept out of possession by the third party.—11 W. R. 444.

78. A decree for possession and — must, with reference to s. 196 Act VIII, be held to mean — down to the date of delivery of possession.—12 W. R. 75. *See* 15 W. R. 203.

79. When the amount of — is not expressly admitted, the Court is bound under s. 197 to deal with it as if it were disputed, and either to determine the amount at the trial or to reserve it for assessment in execution.—*Ib.*

80. The — *payable* in respect of the subject-matter of a suit, under s. 11 Act XXIII of 1861, are only such as are made payable under an order of the Court which passed the decree. In respect to — due after the decision of the first suit, the decree-holder is entitled to institute a fresh suit.—12 W. R. 127.

81. Where a suit for possession with — was dismissed by the first Court, and plaintiff appealed only as to possession and obtained a decree for possession only, his subsequent suit for — from the time of dispossession up to the time of the decree of the Appellate Court was held not barred by ss. 2, 7, or 196 Act VIII nor by s. 11 Act XXIII of 1861.—(F. B.) 13 W. R. F. B. 15.

But every suit brought to recover — must by s. 7 Act VIII include the whole claim arising out of the cause of action which gives the ground for the claim and which cannot be divided.—21 W. R. 223. *See also* 22 W. R. 424, 25 W. R. 113.

82. Where in a suit by L for recovery of certain lands with — a decree was given by the Privy Council declaring L absolutely entitled to two mouzahs, and also to certain lands with regard to which the High Court was ordered to institute certain enquiries,—*Held* that he might have waited the result of those enquiries before applying for execution in respect of the two mouzahs: and that, although the decretal order of the Privy Council did not specifically mention anything about the — of those two mouzahs, the right to — was consequential on the declaration for possession in the decree and upon possession.—(P. C.) 14 W. R., P. C., 23; 21 W. R. 195. *See* 14 W. R. 485, 16 W. R. 30.

83. As a general rule, a suit for — will lie against parties who have been found, in a previous suit for recovery of the land, to have been in wrongful possession, and against them only. If the plaintiff, in the former suit, has recovered a decree against several persons as joint wrong-doers, he cannot single out one or more of them only as defendants in the suit for —.—14 W. R. 76.

They are all equally liable for the —; and any question as to who was in possession of a particular portion of the property, and as to how much he was in possession of, will have to be disposed of amongst themselves in any suit that may be brought for contribution.—25 W. R. 551.

84. A Judge cannot interfere with the award of —, which is a final award so far as the Appellate Court is concerned.—14 W. R. 160.

85. Where a suit for — is included in one for possession, plaintiff must value his claim at its real amount, and cannot be allowed, in the course of a mere enquiry into the amount of damages after decree, to depart from the claim made by his plaint and set up a substantially new and distinct claim.—15 W. R. 61. *But see* 16 W. R. 302.

86. Where — are decreed, the mode of ascertaining them is rightly reserved for the proceedings in execution.—15 W. R. 133.

But where a suit is for — alone, the Court executing the decree is not competent to fix the amount in the course of execution.—22 W. R. 160.

Although the assessment of — is reserved for the period of execution of decree, it is an essential part of the decree and must therefore be made by a Court authorized to pass the decree.—25 W. R. 270.

87. A lessor who prevents ryots from paying rents to the lessee when the latter comes to take possession, is liable for — even though he may not himself collect the rents.—15 W. R. 196.

88. Where a suit is decreed as one for possession with —, the decree-holder is not barred from asking the Court, under s. 197 Act VIII, to enquire into the amount of — in execution.—15 W. R. 203.

89. Obstruction to possession may be the ground of a claim for damages, but it cannot support a claim for —, unless there has been dispossession and the claimant has been prevented from enjoying rents and profits.—15 W. R. 221. *See also* 21 W. R. 8.

90. Where a claim was held to be, not one for — under s. 10 Act VIII, but one for interest.—15 W. R. 408.

91. A superior holder who dispossesses a ryot, is liable not merely for the profit which he makes by letting out the land, but to make good the loss which the ryot sustains by being dispossessed.—15 W. R. 428.

92. A decree of a Court should, under ss. 196 and 197 Act VIII, state whether — are awarded or not.—16 W. R. 25.

93. A successful claimant in ejectment is entitled to — not only against the judgment-debtor, but also against an *ijaradar* who has taken an *ijara* of the property pending litigation; the position of such *ijaradar* being wholly different from that of a ryot.—17 W. R. 148.

94. In the case of endowed lands, the judgment-debtor is entitled to a deduction, from the amount of — ascertained to be due, of the expenses incurred by him in carrying on the worship of the idols.—17 W. R. 208.

95. Where neither period nor amount of — is specified in the decree, they are left to be ascertained in execution.—17 W. R. 209.

96. A having been declared by the High Court entitled to receive back a portion of the — which R had received under a decree incorrectly drawn up,—*Held* that R could not set up that some other person was entitled to it, and that the Judge ought not to take into account such a plea and say that R should retain the —.—17 W. R. 232.

97. In the execution of a decree for possession with — of certain estates, where, owing to the mode in which the Government Revenue has been assessed upon the estates in question and other estates in another district, the revenue cannot be apportioned, the Court has no jurisdiction to determine the — for the latter estates.—17 W. R. 298.

98. A Court ought not to assess — by relying upon *jumma-bundee* papers made by Revenue Officers many years ago without looking into the actual proceeds during the period of dispossession.—*Ib.*

99. The right to — in execution depends on the terms of the decree. Where the first Court awarded — to the time of decree, and the Appellate simply dismissed the appeal from that decree, plaintiff could not recover — subsequent to date of decree in proceedings under s. 11 Act XXIII of 1861, but might bring a separate suit for such —.—18 W. R. 123.

100. In this case the Lower Appellate Court was held to have erred in not referring to two maps not expressly referred to in a decree, so as to assist it in ascertaining the amount of — due under the decree.—18 W. R. 170.

101. Plaintiff and defendant, two brothers, were liable under a joint decree for possession and —. By virtue of a deed of partition of the inheritance between them, property, the — of which had been decreed to the decree-holder, fell to the defendant's exclusive share in 1268 and remained in his exclusive possession until 1271, when the decree-holder recovered possession in execution. Plaintiff now sues to make defendant exclusively liable for the whole of the — due to the decree-holder, between 1268 and 1271. *Held* that the defendant's admission of his exclusive possession between 1268 and 1271 was not sufficient to establish plaintiff's case; and that, in the absence of the deed of partition, the division must be presumed to have been made in equal shares between plaintiff and defendant.—18 W. R. 291.

MESNE PROFITS (*continued*).

102. What is wrongful dispossession rendering the party committing it liable for — as a wrong-doer.—18 W. R. 316.

103. Where the accounts of an estate are made up at the end of the ordinary year, — are rightly treated as due at the end of such year, and interest may be added by way of damages.—19 W. R. 87.

104. Where plaintiff is excluded from the *ijmalee* enjoyment of land by the joint action of defendants who have divided the property among themselves, the defendants are all equally responsible for the damage sustained by plaintiff, and plaintiff is entitled to — up to such time as he gets real and substantial possession in execution of his decree.—19 W. R. 218.

105. Where the words of a decree could be completely interpreted under s. 197 Act VIII, and could only be brought under s. 196 by a reference to certain words in the plaint omitted in the decree, the Court held itself bound to regard the decree as only one for the — claimed.—20 W. R. 54.

105*a*. Where a decree giving possession and — is reversed (by the Privy Council), the Judge making an order for the restitution of the property should also order repayment of the — derived therefrom by plaintiff during his possession.—20 W. R. 239, 22 W. R. 435.

106. Where in execution more land is taken possession of than is covered by the decree and afterwards relinquished, the question of —, being one which arises between the parties to the suit with reference to the execution of the decree, must, under s. 11 Act XXIII of 1861, be determined by the Court executing the decree and not by a separate suit.—20 W. R. 415.

107. In order to establish a claim for —, it is incumbent on plaintiff to show (1) that he was entitled to possession during the period for which — are claimed, and (2) that he was wrongfully kept out of that possession by the defendants for such period.—21 W. R. 276.

108. A decree awarding possession with — from the date of suit is rightly construed as awarding — until the date when delivery of possession shall be effected, and reserving the question of the amount for adjustment in execution.—22 W. R. 328.

109. Where an auction-purchaser, who prayed for possession as well as —, obtained a decree for possession which said nothing about —, and no reason appeared why — should be refused, the High Court allowed — in execution. —22 W. R. 406.

110. Where a mortgagee, after obtaining a decree for foreclosure, sued for possession and —, and the mortgagor did not prove that he had given plaintiff possession or directed his lessee to pay rent to him,—*Held* that the mortgagor (defendant) was liable for — from the date of foreclosure so far as it was not barred by limitation.—22 W. R. 539.

111. In a suit for possession with — where the first Court set aside the Ameen's report and awarded — on the evidence of witnesses, the Lower Appellate Court ought not to depute another Ameen, but should try the question as to — due upon the materials on the record.—23 W. R 164.

112. Where the Privy Council gave plaintiff a decree for possession with —,— *Held* that the intention was to award such a sum as would compensate plaintiff for his actual loss in each year with interest.—23 W. R. 449.

113. Execution may issue with respect to ascertained —, pending enquiry as to unascertained —.—24 W. R. 444.

114. In ascertaining and declaring the amount of — due under a decree, the Court executing it has no power to alter the decree in respect to interest awarded.—*Ib.*

See **Abatement 20.**
Auction-Purchaser (Execution Sale) 15.
Compromise 18.
Costs 14.
Damages 77.
Declaratory Decree 5.
Dower 21, 30.
Endowment 24, 28.
Evidence (Estoppel) 6, 72, 79.
Ikrarnamah 8.
Interest 10, 16, 22, 23, 58, 58, 65, 81, 87.
See **Intervenor 58.**
Joinder of Causes of Action 7, 8.
Jurisdiction 10, 29, 49, 94, 137, 140, 142, 157, 188, 299, 332.
Landlord and Tenant 18, 58.
Limitation 64, 208, 281.
„ (Act XIV of 1859) 2, 19, 35, 43, 64, 66, 67, 71, 112, 117, 166, 176, 204, 232, 248, 317, 322.
Money-Decree 11.
Mortgage 19, 77, 91, 128, 162, 175, 263, 301.
Onus Probandi 230.
Partition 13.
Practice (Appeal) 42.
„ (Attachment) 17*a*, 33, 67.
„ (Execution of Decree) 184, 197, 239, 244, 261.
„ (Parties) 4, 26.
„ (Possession) 6, 25.
„ (Review) 46, 82.
Pre-emption 38.
Privy Council 1, 23, 52, 53, 54, 72.
Putnee Talook 7.
Relinquishment 6.
Rent 79.
Res Judicata 5, 36, 68.
Resumption 3.
Sale 21.
Security 9.
Set-off 18, 22.
Specific Performance 2.
Stamp Duty 3.
Streedhun 11.
Vendor and Purchaser 2*a*.
Zur-i-peshgee Lease 16, 18, 38.

Meymoodars.

See **Enam Grants 1.**
Limitation 71.

Middlemen.

1. Act X of 1859 does not apply to — in possession of lands held by ryots under them, for there cannot be two parties holding the same land in separate right as ryots.— 1 R. J. P. J. 224 (Sev. 973).

2. The mere act of sub-letting does not make a party a middleman excluded from the privileges of s. 6 Act X of 1859.—1 W. R. 71, 8 W. R. 181. *See also* 18 W. R. 528.

Nor exempting the tenure from registration under s. 27. —7 W. R. 15.

3. A ryot does not become a middleman simply because, instead of cultivating the land, he erects shops on it and receives the profits from the shopkeepers.—11 W. R. 88.

See **Churs 36.**
Ejectment 77.
Enhancement 67, 137, 222*a*, 243, 252, 253, 267.
Limitation 196.
Notice 15, 20, 21.
Occupancy 25, 54.
Practice (Possession) 63.

Midnapore.

See **Jurisdiction 492.**
Paiks (Midnapore).

Migration.

See **Hindoo Law (Migration).**

Military.

Military Courts of Requests.—*See* Jurisdiction 278.

See Commitment 11.
Jurisdiction 277, 278, 310, 377.
Mutiny Act.
Practice (Execution of Decree) 177, 183.
Small Cause Court 10.
Will 8.

Milkeut.

See Joinder of Parties 31.
Right of Property 1.

Mines.

See Lease 16.
Partnership 10.

Ministerial Officer.

1. A Judge may disallow the appointment by a Subordinate Court of a — on the ground of disqualification or irregularity, but not after allowing it to stand for 9 months. --7 W. R. 224. *See* 14 W. R. 328.

2. Nor can he remove a Mohurrir from one Moonsiffee to another to his loss, without any fault. 7 W. R. 246.

3. Under s. 9 Act XVI of 1868, all officers of a Moonsiff's Court are appointed by him subject to the approval of the Judge.—11 W. R. 158, 354; 13 W. R. 197. *See* 14 W. R. 328, 376.

4. An appeal from an order of a Magistrate dismissing a — in his establishment lies to the Commissioner of the District and not to the High Court.—12 W. R. 323.

5. A party whose appointment as a — by a Subordinate Judge or Moonsiff, under s. 9 Act XVI of 1868, is disallowed by the Zillah Judge, on the ground that he is not qualified for the appointment, has no right of appeal to the High Court against the Judge's order.--14 W. R. 328.

See High Court 138.
Mohurrir.
Nazir.
Peons.
Peshkar.
Sale 18.
Sheristadar.

Minor.

1. Right of suit by a — on attaining majority without joining other parties in the suit.—S. C. C. 19.

2. The first Court having decreed the plaintiff's claim to recover possession and to have the sale of their estates, effected during their minority, cancelled, so much of the Judge's order as declared that the restoration of plaintiff's rights must be preceded by the payment of the price of a sale by which they had been wronged, was annulled.—1 Hay 5.

3. Where the only property claimed by a — is in dispute between him and another claimant, the Judge should give such a certificate as will entitle the holder to act in any matter for the —; but the Judge cannot appoint a manager to take charge of the disputed property.—1 Hay 583.

4. As s. 19 Act XL of 1858 has provided a special procedure for impugning the accounts of a manager viz. by a regular suit by a relative or friend, a District Judge ought not, on the mere application of a friend, to call for and go into the accounts in a summary way under s 21.—2 Hay 113 (Marshall 244).

5. Actual delinquency or incompetency must be proved before a manager appointed under a will according to s. 7 can be removed.—*Ib.*

6. A decree obtained by collusion against an infant represented by a legal guardian is not void, but voidable at the election of the infant, and such election cannot be exercised so as to interfere with the rights of an innocent purchaser without notice of the fraud.—2 Hay 196 (Marshall 313).

7. Where several co-proprietors by an ikrar exchanged a piece of land with another person (the defendant) for mutual convenience and the avoiding of disputes, and the defendant erected buildings on the land, the Court, considering how many of the co-proprietors had joined in the act, refused to allow one of them, who was a — at the time of the exchange, to disturb defendant's possession without proof that he was injured by the exchange.—L. R. 164.

8. A — should be made a party to a suit under s. 73 Act VIII of 1859, and his guardian may then appear and defend the suit. If there be no guardian already appointed, the mother may apply to the Court for liberty to defend as his guardian under s. 3 Act XL of 1858.--Sev. 929. *See also* 20 W. R. 48.

9. The appearance of an alleged — may be taken into consideration in disposing of his plea of minority, but the decision must rest mainly upon positive evidence which he is bound to produce. -W. R. Sp. 304, 366.

10. Liability of minors for payment of debt of their executor and guardian (which they had undertaken to pay by instalments) notwithstanding no adjustment of accounts has taken place.—(P. C.) 2 W. R., P. C., 47 (P. C. R. 443).

11. Liability of minors for *bonâ fide* acts of their guardians.—1 W. R., Mis., 16. *See also* 17 W. R. 374, 20 W. R. 38.

12. A person apprehending danger to the health or life of a — should ask the Court's interference under s. 21 Act XL of 1858.—2 W. R., Mis., 6.

13. A purchase from a — is not *ipso facto* invalid.—3 W. R. 10.

Acquiescence in or ratification of conveyance by the — when he comes of age will give validity.—11 W. R. 131, 20 W. R. 271.

14. A —, when he comes of age, is not precluded from suing in his own name for anything that his guardian, either through ignorance or negligence, has omitted to prosecute. —3 W. R. 13.

15. Limit of minority.—*See* Majority.

16. Suits for or against minors can only proceed when they are duly represented by a guardian or next friend.—3 W. R. (Act X) 138, 11 W. R. 300. *See* 14 W. R. 468.

It is not optional with a — to sue either in his own name or through a guardian; he must be represented by a legally constituted guardian.—23 W. R. 395.

17. Act IX of 1861 applies to Pegu and also to minors the lawful children of European natural-born British subjects.—3 W. R., R. C., 5.

18. In appointing a manager of the estate of a —, a Judge has to consider not only the nearness of kindred, but also the suitableness of the person to be appointed.—1 W. R., Mis., 22.

19. A — has a qualified power of contracting; and an implied or express contract for necessaries is binding absolutely on him.—5 W. R. 2.

20. As a — cannot himself state and settle an account so as to be bound thereby, so neither can he authorize another party to do that, which he cannot do himself.—*Ib.*

21. Authority given by the father of a — and other members of a joint Hindoo family to borrow money, cannot bind the — with regard to debts incurred after his father's death, in the absence of proof of the money having been borrowed for the use of the —.—5 W. R. 231.

22. A — being a member of a joint Hindoo family would not necessarily make the sales good against him if the proceeds did not benefit him or his father's estate.—*Ib.*

23. There is no reason why a judgment obtained in any suit by a — should not be enforcible in favor of the —. —6 W. R. 185.

24. The estate of a — is not liable for debts contracted by his guardian otherwise than for the benefit of the — and without legal necessity.—11 W. R. 240, 20 W. R. 398. *See* 12 W. R. 367.

But it is liable for an act done by a guardian naturally arising out of the management of the property of the —. —16 W. R. 252.

25. A lease or other transaction for a —, which is not absolutely void but only voidable, must be considered valid until it is avoided by some distinct act on the part of the — after his coming of age.—12 W. R. 378. *See also* 13 W. R. 166, 172.

Minor (*continued*).

26. The Judicial Commissioner in Assam is the officer to whom, under Act XL of 1858, the charge of the person and property of a — is committed.—12 W. R. 424.

27. The plea of minority may be used to protect a —, but not to injure third parties; as where a sale is deliberately made by a — when sufficiently advanced in years to understand the nature of the transaction, and he receives the full amount of the purchase-money, although the conveyance is invalid by reason of his minority, he must refund the consideration-money before he can get back the property.—15 W. R. 268.

So also in a suit to recover property sold by plaintiff's guardian during plaintiff's minority, where defendants fail to show a good title but the purchase-money is shown to have been applied in any way to the benefit of the —, the — is not entitled to a decree for possession without refunding the purchase-money with interest after allowing a set-off for net rents and profits for the time of defendant's possession.—21 W. R. 287.

28. A Small Cause Court is competent, under s. 3 Act XL of 1858, to allow any relative of a — to institute or defend a suit without a certificate of administration.—15 W. R. 369.

29. A manager appointed, under s. 7 Act XL of 1858, to the estate of a —, cannot get rid of or resign that trust without the permission of the Court, and without duly accounting to his successor for all moneys received and disbursed by him.—15 W. R. 398.

30. The extent to which an infant is bound by a decree passed against him while represented by a guardian.—16 W. R. 231.

31. A Court ought not to make a decree by consent against an infant without ascertaining that it is for the benefit of the infant that such a decree should be pronounced.—16 W. R. 232.

32. Where a —, the issue of a Christian marriage, was removed from the custody and guardianship of her mother and the mother's second husband, who had both become Mahomedans and contracted a Mahomedan marriage while the second husband was already the husband in Christian marriage of a living Christian wife.—(P. C.) 17 W. R. 77.

33. In the selection of a school in such cases, it is desirable to have some independent trustworthy person as guardian, to whom the — can apply and whose duty will be to communicate to the Court any matter which might arise.—(P. C.) *Ib.*

34. From the necessity of the case, a child in India must be presumed to have his father's religion and his corresponding civil and social *status*, and therefore it is ordinarily, and in the absence of controlling circumstances, the duty of a guardian to train his — ward in such religion.—(P. C.) *Ib.*

35. Where two parties were fighting to get hold of the property of a — who was likely to suffer if it remained in the hands of either, the Court ordered it to be made over to the Collector under s. 12 Act XL of 1858, with direction to appoint a manager and guardian.—17 W. R. 269.

36. A Lower Appellate Court was held to have properly exercised its discretion under Act XL of 1858 in refusing to allow a decree to be passed against a — plaintiff not properly represented.—17 W. R. 314.

37. A Judge was held not to have improperly exercised the discretion vested in him by s. 3 Act IX of 1861 in not removing a — 5½ years old from the custody of his natural mother.—17 W. R. [illegible].

38. A guardian has no right or interest in the property of the —, and the Courts ought to be extremely careful with regard to allowing the property of a — to be sold in execution.—18 W. R. 55. *See also* 20 W. R. 372.

39. A — on attaining his majority is not required by law to give notice of his intention to repudiate an alienation improperly made during his minority by his guardian.—18 W. R. 404.

40. A — ought not to be concluded by an act done to his prejudice by his mother acting as his guardian; nor, on the other hand, ought she to be allowed to avoid her own act by setting up the interests of her son; but some third person should come forward and sue as the next friend of the — and make the mother a defendant in the cause.—19 W. R. 283.

41. Under the Hindoo law, a — cannot make a contract for himself, and no one can make a contract which shall bind him and his property unless he has authority under the law to do it and under legal necessity.—20 W. R. 38.

42. In trying an issue between a person of mature years and a —, the Court should take nothing as admitted against the — unless it is satisfied that the admission is made by some one competent to bind the — and fully informed upon the facts.—21 W. R. 228. *See also* 23 W. R. 348.

43. Although it is more regular and very desirable to have a formal order under s. 3 Act XL of 1858 granting permission to his representative to appear in a suit for a — without a certificate, yet where a plaint was admitted without a certificate, it was assumed that the Court did intend to grant that permission.—22 W. R. 525.

44. A — was held not affected by a decree in a suit in which his interests were not properly represented and in which he was not made a party strictly in the manner prescribed by s. 69 Act IV of 1870 (B. C.).—23 W. R. 348.

45. A Judge has no power to appoint a party to be the guardian of a — and to direct the estate of the — to be placed under the management of the Court of Wards. What he has power to do under s. 12 Act XL of 1858 is to direct the Collector to take charge of the estate, and then it will become the duty of the Collector to appoint a manager and a guardian in the same manner, etc., as if the minor's property and person were subject to the Court of Wards.—*Ib.*

See Abduction 2.
Acquiescence 2.
Advancement 1.
Ameen 16.
Ancestral Property 11.
Appeal 144.
Arbitration 20.
Arrest 11.
Attached Property 17.
Auction-Purchaser (Execution Sale) 21*a*, 3C, 38.
Bond 18.
Certificate 9, 19, 41, 44, 45, 50, 51, 54, 58, 59, 70, 72, 78, 92, 93, 116.
Compromise 3, 4, 5, 12, 20.
Cross Decrees 12.
Costs 25, 66, 100, 102, 105.
Court of Wards.
Damages 74, 99.
Evidence 5.
Forfeiture 22.
Fraud 18.
Gift 11, 12, 13, 14.
Guardian.
Hindoo Law (Adoption) 24, 37, 42, 53, 63, 68, 76.
" " (Alienation 5, 19, 24.
" " (Coparcenary) 25, 49, 59, 61, 92.
" " (Sale) 7, 13, 15, 17.
" Widow 6, 90.
Husband and Wife 33, 38, 41.
Intervenor 36.
Joinder of Parties 17.
Jurisdiction 89, 151, 152, 225, 304, 355, 400, 495, 511.
Kubooleut 5.
Lease 36, 46.
Limitation 7, 23, 32, 132, 148, 234.
" (Act XIII of 1848) 14.
" (Act XIV of 1859) 56, 63, 88, 93, 97, 98, 130, 162, 255, 293, 310.
" (Act IX of 1871) 15, 19, 25.
" (Reg. III of 1793 s. 14) 4.
Mahomedan Law 20, 32, 33, 36.
Manager 3, 6, 13, 14.

MINOR (*continued*).

See Marriage 16, 20, 22, 40, 41.
Meeras Pottah 3.
Mortgage 17, 278, 279.
Onus Probandi 103, 149, 159, 258, 267.
Partition 29.
„ (Butwarra) 30.
Practice (Commissions) 6.
„ (Execution of Decree) 175, 227.
Pre-emption 32, 44, 71.
Privy Council 64.
Prostitution 1.
Ratification 2, 3, 4.
Recorders 1.
Res Judicata 69, 79.
Right to sue 13.
Sale 4, 15, 16, 22, 30, 49.
„ Law (Act XI of 1859) 32.
Succession 4.
Vendor and Purchaser 14*a*, 24.

Misappropriation.

See Criminal Misappropriation.
Evidence (Presumptions) 17.
Gomashta 2.
Hindoo Law (Coparcenary) 96.
Jurisdiction 28, 184, 188, 215, 223.
Limitation (Act XIV of 1859) 24, 48.
Pleader 13.
Res Judicata 6.
Special Appeal 55.
Splitting Cause of Action 1, 9.

Miscarriage.

In a case in which the child was full grown, the Court declined to convict the accused of causing — under s. 312 Penal Code, but convicted them of an attempt to cause — under ss. 312 and 511.—19 W. R., Cr., 32.

Miscellaneous Appeal.

1. A summary appeal does not lie from an order rejecting a plaint.—1 W. R., Mis., 25.
2. A party, who was entitled to appeal specially from an order in the Executive Department, having elected to institute a regular suit to set aside the order, his present application to file a special — out of time was rejected.—2 W. R., Mis., 35.
3. Where an enquiry has been held under s. 229 Act VIII and a regular appeal lies to the High Court under s. 231, a — cannot be entertained.—9 W. R. 337.
5. An appeal from an order rejecting a plaint for misnomer is a — and so also an appeal from an order rejecting the appeal.—12 W. R. 70.
6. A — was allowed to be filed from the order of a Lower Appellate Court setting aside an order directing, under s. 151 Act VIII, the realization, by attachment and sale, of the expenses of a witness *after* he was discharged without being required to give evidence.—12 W. R. 450.

See Appeal 127.
Interest 108.
Practice (Execution of Decree) 262.
Rules of Practice 1, 3.
Stamp Duty 14, 34.

Miscellaneous Proceedings.

See Practice (Parties) 24.

Mischief.

1. The authority vested in the Criminal Courts of punishing persons for acts of — should be exercised with great caution so as not to let it be resorted to as a trenchant mode of deciding civil questions of right.—6 W. R., Cr., 59.
2. A conviction for — was quashed in a case where it appeared that the complainant had formerly destroyed a crop belonging to the accused, and the latter, instead of complaining at once, merely bided his time and then took the complainant's crop.—18 W. R., Cr., 10.
3. Cutting and taking away bamboos (especially where there was a dispute as to the title to the land on which the bamboos were) was held not to be — under s. 425 Penal Code.—21 W. R., Cr., 38. *But see* 25 W. R., Cr., 46.
4. Where a person, engaged in laying out his garden and making the foundation for a house, encroached slightly on the inner slope of a large embankment, he was held not guilty of the offence of —.—25 W. R., Cr., 69.

See Cattle Trespass 2.
Charge 3.
Criminal Trespass 2.
Cumulative Sentences 3.
Deputy Magistrate 1.
Jurisdiction 488.
Summary Trial 5.

Misdescription.

In a suit for rent, where plaintiff described her *jote* as *dur-mourosee* and the papers showed her to be a *mourosee ijaradar* or *dur-mourosee talookdar*, the —, if any, was held to be insufficient to throw out plaintiff's claim.—17 W. R. 17.

See Auction-Purchaser (Execution Sale) 2, 26.
Boundary 14.
Libel 1.
Sale 46, 239.
Settlement 27.

Misjoinder.

1. A suit by a zemindar for possession of lands and for arrears of rent of those lands under a kubooleut given by the defendant and to have it declared that a Bhakee Birt tenure set up by the defendant is a fabrication, is not multifarious or bad on the ground of — of causes of action. —(P. C.) 5 W. R., P. C., 55 (P. C. R. 628).
2. In a suit by a son against a father and certain purchasers to obtain a declaratory decree in respect to certain property, the fact of each purchaser being concerned only in a portion of the case does not render the suit multifarious. —3 W. R. 102.
3. An Appellate Court can under s. 37 Act XXIII of 1861 separate misjoined suits and try them separately.—4 W. R. 109.
It need not dismiss the whole suit on the ground of —. —20 W. R. 482. *See also* 13 W. R. 284.
4. Where the three widows of three out of five sons sued for their husbands' shares of property, the death of the husbands of two of the plaintiffs before their father was held fatal to the suit of all three, and the plaint was held bad on the ground of multiplicity.—8 W. R. 464.
5. There was held to be no — in a case where plaintiffs endeavoured to obtain an adjudication in one suit instead of resorting to two separate suits, viz. one suit against defendant No. 1 for the recovery *simpliciter*, preceded as it must have been by another suit against defendant No. 2 for declaration of the shares to which the plaintiffs were entitled.—20 W. R. 304.
6. Where in a suit for arrears of rent two of the defendants plead transfer to one M A who intervenes and in the decree is made jointly liable for costs, the Judge was held to have been in error in allowing the three to appeal together, as their joint appeal ought to have been treated as two separate appeals.—20 W. R. 443.
7. In a suit to recover rent from defendants with whom engagements had been entered into separately, plaintiff

MISJOINDER (*continued*).

obtained a decree making each of them liable for the whole sum claimed. *Held* that there was a — of the defendants and that the decree was wrong in law, but that if the first Court had made each defendant liable in proportion to the rent he had engaged to pay, the objection of — would not have been allowed to prevail.—22 W. R. 133.

8. Where a single suit for rent against the holders of several tenures is objected to on the ground of —, the mere fact of non-registration as separate holdings is no answer to the objection. The Court should enquire whether the tenants have not in fact been dealt with as holders of separate tenures.—22 W. R. 334.

9. A suit by plaintiffs having separate interests was not dismissed on appeal on the ground that by their suing together no substantial injustice was done to defendant, and that the dismissal of the suit now would be to throw away all the money which had been expended on it and to leave plaintiffs with a claim which might be barred by limitation.—25 W. R. 121.

See Assignment 15.
Cause of Action 11, 18.
Irregularity 7.
Joinder of Causes of Action.
,, Parties.
Miscellaneous Appeal 5.
Onus Probandi 14.
Practice (Possession) 62, 76.
,, (Review) 94.
Res Judicata 78.
Rioting 8.
Special Appeal 34.
Splitting Cause of Action.

Misrepresentation.

See Contract 18.
Damages 98.
Dismissal of Suit or Appeal 24.
Evidence (Estoppel) 10, 49, 117, 118.
Forgery 28.
Fraud 17.
Husband and Wife 31.
Mortgage 269.
Practice (Amendment) 16, 26.
Putnee Talook 109.
Sale 132.
Vendor and Purchaser 43.

Missing Person.

See Mahomedan Law 25, 26.

Mistake.

A Magistrate is no way limited in his action by the — of a complainant in citing a wrong section of the Penal Code as the section under which the offence charged falls. —17 W. R., Cr., 10.

See Bond 25.
Decree 18.
Evidence (Oral)
Mortgage 108.
Nuisance 18.
Practice (Amendment) 17, 25.
,, (Review) 91.
Registration 147.
Sale 156.
Settlement 27.
Special Appeal 115, 144.
Wrongs and Remedies 5.

Mitacshara.

See Ancestral Property 6, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21.
Auction-Purchaser (Execution Sale) 39.
Certificate 89, 117.
Cuttack 1.
Forfeiture 22.
Ghatwals 5.
Hindoo Law 1, 13.
,, ,, (Alienation) 4, 5, 6, 12, 14, 16, 17, 21, 22.
,, ,, (Coparcenary) 44, 51, 92, 94, 102.
,, ,, (Inheritance and Succession) 1, 6, 10, 17, 18, 32, 41, 43, 48, 52, 54, 59, 62, 64, 72, 73, 78, 81, 84, 85, 87, 92, 102, 103, 105, 115.
,, ,, (Migration) 2, 5.
,, ,, (Sale) 2, 3, 15, 16.
,, Widow 32, 54, 56, 63, 71, 78, 79, 80.
Lunatic 5.
Marriage 41.
Mortgage 210.
Onus Probandi 164.
Partition 4*a*, 7*g*, 24*b*.
Right to sue 8.
Self-acquired Property 6.
Streedhun 3, 4, 6, 10.

Mithila.

See Ancestral Property 13, 21.
Hindoo Law (Adoption) 44.
,, ,, (Alienation) 7, 8.
,, ,, (Inheritance and Succession) 31, 43, 96.
,, ,, (Migration) 2.
,, ,, Sale 1, 7, 8, 10.
Right to sue 1.
Self-acquired Property 6.

Mogulan Dues.

See Sale 27.

Mohasil.

See Forfeiture 4.

Mohunt.

See Certificate 38, 81, 106.
Endowment 4, 64, 66, 71.
Limitation (Act XIV of 1859) 9, 312.
Resumption 16.

Mohurrir.

See Limitation (Act XIV of 1859) 188.
Ministerial Officer 2.
Practice (Commissions) 29.
Public Servant 4.

Mokurruree Tenure.

1. S. 11 Reg. XXVIII of 1828 (requiring successions to be reported to the Collector within 6 months) refers only to the security of the Revenue, and not to private interests. —W. R. F. B. 31 (1 Hay 207).

2. Where a Mokurruree pottah is for a specified area, the landlord may under s. 17 Act X of 1859 assess all the

MOKURRUREE TENURE (*continued*).

excess land in the possession of the Mokurrureedar.—W. R. Sp. (Act X) 38 (2 R. J. P. J. 199). *See also* 25 W. R. 146.

3. Where plaintiff sued to set aside a mokurruree lease under which defendant and his ancestors had held for more than 35 years but which conveyed no interest in property beyond the life of the lessee who died in 1852, the Court refused to admit the doctrine that such mokurruree lease gave a proprietary title so as to enable the lessee to plead adverse possession and the Statute of Limitation.—L. R. 15.

4. Where a — was held on condition of service to be rendered to the proprietor of the estate to which it appertained, and the estate has been confiscated for rebellion, it cannot be recovered by the mokurrureedar.—W. R. Sp. 5.

5. A mokurruree ryot may build a well or do anything that does not endanger the zemindar's ground rent.—W. R. Sp. 279 (2 R. J. P. J. 359).

6. A Collector has no power to grant a pottah giving a —.—W. R. Sp. (Act X) 58 (2 R. J. P. J. 266).

7. A mokurruree title, judicially established, cannot be disturbed by a decree for arrears of rent at different times passed subsequently without reference to such title.—W. R. Sp. (Act X) 85 (2 R. J. P. J. 370).

8. A — cannot be extinguished by a subsequent farming lease.—W. R. Sp. (Act X) 117.

9. The heirs of the grantee of a — who dies before taking under a conditional and personal grant, cannot claim under it.—1 W. R. 82.

10. A zemindar cannot sue in the Civil Courts to set aside a mokurruree lease which has been once held valid in the Revenue Court under Act X of 1859, but he may sue to eject a party holding on an alleged —, he never having recognized him as a tenant, but treating him simply as a trespasser.—1 W. R. 222 (3 R. J. P. J. 273).

11. Where a ryot alleges a mokurruree right by purchase, the nature of his vendor's title should be enquired into, and whether it was transferable or not.—2 W. R. (Act X) 4; 4 W. R. (Act X) 16.

12. Excess lands held under a mokurruree pottah dated prior to 1790, are not liable to separate assessment.—2 W. R. (Act X) 33 (4 R. J. P. J. 108).

13. A *mokurruree istemraree* holding is a perpetual (hereditary) holding at a fixed jumma.—3 W. R. 84 (4 R. J. P. J. 461); 5 W. R. 101; 9 W. R., P. C., 3; 12 W. R. 3. *See* 14 W. R. 107.

14. A lessee cannot be summarily evicted from a — by reason of a previous arrangement between his lessor and a third party which never went beyond the lessor's receipt of earnest-money from that party, and of which the lessee had no notice.—6 W. R. 234, 7 W. R. 463.

15. The use of no particular form of words is necessary to convey mokurruree rights.—7 W. R. 394. *See* 8 W. R. 502; 9 W. R., P. C., 3; 10 W. R. 403; 17 W. R. 485; (P. C.) 19 W. R. 141. *But see* 14 W. R. 262.

16. The grant of a mokurruree lease is beyond the scope of a naib's general authority.—*Ib.*

17. When a mokurrureedar resigns his tenure, the durmokurrurees created by him come to an end; but the position of ryots holding rights of occupancy is not affected by the extinction of either the tenure or the under-tenures.—10 W. R. 408.

18. Under-tenants *bonâ fide* holding and cultivating lands within a — cannot be summarily ejected by an auction-purchaser, merely because they fail to show that their holding is antecedent to the creation of the —.—11 W. R. 253. *See also* 13 W. R. 410, 26 W. R. 104.

19. A ryot having a right of occupancy can create a mokurruree lease; but the terms of a lease granted by him to a third party can only be binding between them both. If the landlord dispossess the sub-lessee without the sanction of law, he is guilty of trespass.—13 W. R. 291.

20. In a suit by an auction-purchaser of an under-tenure, to recover *khas* possession of land covered by a mokurruree, where defendant pleads right of occupancy, the latter is protected from ejectment by s. 6 Act X; and even if the lease is avoided under s. 16 Act VIII of 1865 (B. C.), ejectment must not necessarily follow.—13 W. R. 410.

21. A Deputy Collector's decree for rent cancelling a — with reference to s. 22 Act X, as not creating a permanent or transferable interest, though erroneous, cannot be treated as a nullity or as passed without jurisdiction. The tenure, however, is not cancelled as long as the decree is not executed.—13 W. R. 441.

22. Where a joint undivided estate is subjected to private partition, and a portion of one share is granted by the owner in mokurruree, the grantee's mokurruree title cannot be got rid of by a regular *butwarra* subsequently made.—13 W. R. 447.

23. Where there are no words in a lease extending its provisions to other parties beyond the lessee, its terms must be interpreted as applicable to the lessee only, unless the Court is able, from the conduct of the parties and the surrounding circumstances, to come to a different conclusion.—14 W. R. 262.

24. Where a lease contains a condition whereby the lessor agrees not to put an end to the — of his lessee except on the occurrence of a fresh settlement on the part of Government, it does not follow that the lessor intends to constitute a hereditary lease if no Government settlement takes place.—*Ib.*

25. In such a case a lessor's right to re-enter arises on the death of the lessee; but if the representatives of the lessee have been allowed to hold over by the heirs of the lessor to whom they have paid rent, the cause of action to a purchaser of the lessor's rights and interests arises on the refusal of lessee's representatives to permit him to re-enter.—*Ib.*

26. Parties holding a permanent settlement from Government cannot question the validity of a mokurruree pottah previously granted by themselves when they held the property under a temporary settlement.—15 W. R. 394.

27. The effect of a *solehnameh* confirming the rent of a tenure on the part of the manager of ancestral property, and agreeing that it shall not be enhanced, was held to create a *mouroosee* — at a fixed rent.—15 W. R. 434.

28. A — granted in perpetuity cannot be resumed by the grantor even if the grantee dies without leaving heirs.—15 W. R. 549.

On the failure of heirs of the last possessor, the zemindar takes neither by right of reversion, nor by escheat as the superior lord, but the tenure escheats to the Crown.—(P. C.) 25 W. R. 239.

29. Though a lease contained no words importing an hereditary character, yet it was held to have the effect of being hereditary on the ground that the period of its continuance was not dependent on the life of any party, whether lessor or lessee, but on the continuance of the superior tenure.—17 W. R. 485.

30. Only a reversioner and those having some interest in the estate can contest alienations by Hindoo widows of shares in a hereditary —. The zemindar may, if necessary, cause the sale of the tenure for arrears of rent, but he cannot take *khas* possession by force.—18 W. R. 406.

31. The auction-purchaser of a — cannot set aside rights of occupancy existing from a period prior to the creation of such tenure, s. 16 Act VIII of 1865 (B. C.) referring to incumbrances created subsequently.—19 W. R. 106.

32. The liability to ejectment of the holder of a *mokurruree istemraree* ijara is to be determined by the conditions of his lease, and not by the provisions of s. 21 Act X.—19 W. R. 349.

The same principle was held applicable to talookdars.—22 W. R. 376.

33. When a party who makes a mokurruree grant has enough in him to feed that grant, *i.e.* to make it substantial and valid, he cannot in a Court of Equity be allowed afterwards to deny its efficacy.—20 W. R. 291.

34. A mokurrureedar who has got his lease from the members of a joint Hindoo family who are in actual possession and managing the joint property, cannot be rejected or interfered with by another member not in possession, unless it can be shown that he has acted dishonestly.—24 W. R. 319.

See Appeal 46.
Auction-Purchaser (Revenue Sale) 1.
Co-sharers 7, 40.
Declaratory Decree 49, 58.
Enhancement 4, 16, 41, 47, 72, 87, 97, 102, 154, 167, 169, 171, 184, 190.

MOKURRUREE TENURE (*continued*).

See Evidence (Estoppel) 80, 41, 76.
Ghatwals 1, 15, 16, 29, 31, 32.
Gift 30.
Hindoo Law (Alienation) 17.
Intervenor 54.
Judgment 8, 14.
Jurisdiction 93, 132, 144, 159, 165, 406.
Limitation 83, 168, 188, 196.
,, (Act X of 1859) 24.
Mortgage 155, 249.
Occupancy 29, 33, 34.
Onus Probandi 114, 127, 165, 200, 237, 242, 259.
Possession 22, 35.
Pottah 25.
Practice (Possession) 68.
Pre-emption 38.
Registration 120.
Remission 1.
Rent 3, 47.
Sale 157.
Special Appeal 11.
Suit on Document 2.
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Transferable Tenure 1.

Money.

See Bond 16.
Certificate 115.
Deed of Sale 6.
Hindoo Law (Coparcenary) 78.
Joinder of Causes of Action 9.
Jurisdiction 362, 445.
Lease 76.
Loan.
Money Decree.
Money Order.
Onus Probandi 226.
Payment 9.
Practice (Attachment) 34, 54.
,, (Execution of Decree) 135, 272.
Principal and Agent 25.
Purchase-money.
Registration 102, 103.
Rules of Practice 82.
Set-off 10, 19.
Suit for Money.

Money Decree.

1. Money recovered under a decree or judgment cannot be recovered back in a fresh suit or action whilst the decree or judgment under which it was recovered remains in force; but if the decree or judgment be reversed or superseded, the money recovered under it should be refunded and is recoverable either by summary process or by a new suit.—(P. C.) 3 W. R., P. C., 11 (P. C. R. 570).

2. *Quære.* Whether the holder of a — can follow the property previously pledged to him for the bond-debt, after its conveyance to another party.—W. R. Sp. 311.

3. When a person, to whom property is pledged for a debt, obtains a simple — against his debtor, he cannot execute that decree against the property pledged to the prejudice of a subsequent *bonâ fide* purchaser. He may enforce his lien by separate action against the party in possession of the property pledged to him, but he cannot execute the — against the property in the hands of the subsequent purchaser.—(F. B.) 1 W. R. 315; 5 W. R. 115; 6 W. R. 312; 7 W. R. 30, 206, 483; 8 W. R. 29; 10 W. R. 27, 88, 468; 11 W. R. 149, 332; 12 W. R. 522; 20 W. R. 408; 21 W. R. 150. *See also* 7 W. R. 232, 8 W. R. 116, 291; 9 W. R. 82; 11 W. R. 194; 12 W.R. 362; 14 W. R. 77; 15 W. R. 27; 16 W. R. 119; 22 W. R. 308; (F. B.) 23 W. R. 187, 196, 338; 24 W. R. 94, 210; 25 W. R. 513.

4. Under s. 11 Act XXIII of 1861, the recovery of money taken in execution of a decree, which is afterwards reversed on appeal, is not the subject of a new suit, but must be enquired into by the Court which passed the decree as a matter arising between the parties relating to the execution of such decree.—2 W. R. 275, 4 W. R. 66.

5. A plaintiff who by his plaint seeks a — is not estopped from proceeding against land in execution of that decree.—2 W. R. 282.

6. Power of a widow, to whom a certificate to collect her husband's debts has been granted, to sell a — belonging to her husband's estate.—2 W. R., Mis., 19.

7. A mortgagee who took not a — for the amount of his loan was held entitled to proceed against any property belonging to the debtor, though, by so doing, he would throw up his lien on the property pledged to him.—3 W. R., Mis., 16.

8. Where the holder of a —, who has acquiesced in an order for the sale of certain property, credits only a portion of the proceeds in satisfaction of the decree, he is not entitled to have his lien declared upon other property.—4 W. R. 67.

9. If a — in a suit for damages on account of illegal distraint and sale, remains unsatisfied after execution against moveable property, plaintiff may under s. 109 Act X apply to the Collector for execution against the immoveable property of his judgment-debtors.—6 W. R. (Act X) 67.

9*a*. Where property hypothecated for a debt is sold in execution of a — passed under the bond hypothecating it without any additional order in the decree for enforcing the lien on the property, and the holder of a subsequent similar bond, who has attained an order on his decree directing the sale of the property, seeks to enforce his lien upon the property so purchased, the purchaser is entitled to go on the previous lien, as he not only stands in the shoes of the debtor, but has purchased all rights in the property hypothecated by the debtor when his hypothecation was made, and has thus also acquired the rights of the decree-holder to satisfy whose due the property was sold when this purchaser purchased.—7 W. R. 232. *See also* 24 W. R. 94. *But see* 19 W. R. 83.

10. A decree for rent under the old law was a simple — and did not burden the tenure after it had *bonâ fide* passed by private purchase out of the hands of the debtor.—7 W. R. 376.

11. A decree for mesne profits to be ascertained in execution is a — under s. 232 Act VIII, and is properly followed by attachment and (when the amount of mesne profits has been determined) by sale.—8 W. R. 9.

12. The sale of a Hindoo widow's rights and interests in her husband's estate, in execution of a — against her, does not touch the estate.—8 W. R. 519.

13. An ordinary — in a suit on a bond with a mortgage clause, but silent about that clause, cannot be executed against property no longer belonging to the judgment-debtors.—9 W. R. 82.

14. Where a defendant dies *pendente lite* and plaintiff obtains a decree for money lent on a deed of conditional sale, he may follow any assets left by his debtor but has no lien on the land.—11 W. R. 225.

14*a*. Where a mortgagee brings a suit upon his bond and obtains a — which says that execution shall be had against the property pledged and then against the person, it is competent for him to waive his right as mortgagee, and resting upon his — to seek to have a share in the surplus proceeds of sale under s. 271 Act VIII.—14 W. R. 209.

So also under s. 237.—24 W. R. 305.

15. A party obtaining a farming lease as security for a loan, and then obtaining a — in a suit on the bond executed by the lessor, cannot retain his former *status*.—14 W. R. 463.

16. Where a mortgagee electing to take a simple — purchases the mortgaged land sold in execution, and is afterwards ejected by a party claiming to hold on a prior con-

MONEY DECREE (*continued*).

veyance, he cannot bring a suit to have the mortgaged property declared liable.—15 W. R. 195. *But see* 23 W. R. 460.

17. A mortgagee taking out a — is not bound by s. 7 Act VIII to bring his suit for the whole of the property belonging to his judgment-debtor if it has passed to different parties under separate title-deeds, but may follow the property upon which he has a lien into the hands first of one purchaser and then of another.—15 W. R. 486. *See also* 22 W. R. 308. (F. B.) 23 W. R. 187, 460.

18. Where a form of mortgage or charge created by a bond does not vest any estate in the mortgage, but only establishes a lien as incident to the money debt, such lien continues when the debt passes from a contract into a judgment-debt, and when such judgment-debt is assigned to another by sale of the decree.—19 W. R. 255, 22 W. R. 98.

19. If at the date of the sale of the decree the property over which the lien extends has already been attached, seeing that an attachment under a — on a mortgage-bond and the mortgage lien cannot co-exist separately in the property hypothecated, the attachment in question must be treated as enforcing the lien: and if the property is sold pending such attachment, the lien becomes transferred from the property to the purchase-moneys.—*Ib. See* 23 W. R. 373.

20. If the purchaser of the decree applies for attachment of the purchase-moneys and his application is rejected, he may institute a regular suit to establish his title to them under s. 270 Act VIII; but failing to do so, he forfeits his lien both in the land and in the purchase-moneys: though he does not forfeit his right to execute the decree otherwise.—*Ib.*

21. A decree for the payment of a loan with costs and interest, and for recovery of the amount by sale of the property pledged, does not limit plaintiff's right to recover only by sale of the property in question, but defendant's personal liability arises on receipt of the money, and the mortgage merely gives additional security.—19 W. R. 281.

22. Where there is a simple mortgage and a — obtained on the bond, if the creditor chooses to proceed against the mortgaged property and to sell it, he must be taken to sell the whole interest of his debtor. The interest of the debtor is in no way reduced by the hypothecation, and no part of his estate passes from him to the creditor. The property is simply pledged as a security.—22 W. R. 98.

23. Where a mortgagee comes to an arrangement with three out of five joint mortgagors by which he consents to take as payment a — against three of them, the amount of the decree must be considered as a sum paid in reduction of the liability of the fine.—22 W. R. 310.

24. A decree of the first Court declaring decree-holders entitled to satisfy their decree by the sale of certain hypothecated properties, being reversed by the High Court, and affirmed by the Privy Council,—*Held* that the lien established by the Privy Council decree was not lost to the decree-holders by their previous conduct in receiving a portion of the decretal money by the sale of part of the mortgaged premises, which money was subsequently returned by them to the judgment-debtor, on the decision of the first Court having been reversed by the High Court.—23 W. R. 193.

25. Where a decree which has been passed on a mortgage-bond is to the effect that the decree-holder is entitled to have his lien satisfied by the sale of the rights and interests of the judgment-debtor in all the properties hypothecated, the High Court cannot modify its terms and direct the Court charged with the execution to sell first the judgment-debtor's rights and interest in one portion of the properties pledged, and then, if the proceeds are not sufficient, to proceed against the remaining portion.—23 W. R. 195.

See Ancestral Property 20.
Attached " 22.
Auction-Purchaser (Execution Sale) 44, 45.
Bond 8.
Evidence (Estoppel) 125, 129.
High Court 71, 75.
Immoveable Property 2.
Indigo 9.
Instalments 6, 7.
Jurisdiction 342, 394.
Limitation (Act XIV of 1859) 121, 188.
Mortgage 35, 36, 44, 75, 125, 165, 188, 196, 288, 291.
Practice (Execution of Decree) 59, 169, 170.
Res Judicata 44.
Sale 125, 160, 191, 212, 225, 229.
Summary Award for Rent 1*a*.
Vendor and Purchaser 49.
Zur-i-peshgee Lease 31.

Money Order.

See Stolen Property 12.

Mookhtar.

1. The grant of a mookhtarnamah by the widow of a son who died during his father's lifetime is invalid.—2 Hay 162.

2. Rajahs and their mookhtars.—2 Hyde 250.

3. Special power not necessary where a general mookhtarnamah conveys authority to borrow. Where special power exists for sale of land, proof of motive of sale not necessary.—1 W. R. 33.

4. A Magistrate has no power to dismiss a — generally, unless he be convicted of an offence involving moral turpitude or infamy.—1 W. R., Cr., 34.

5. The - being unable to answer, the plaintiff was called on either to appear or send some one who could reply to the questions of the Court. He failed to do either, and it was held that the Court was justified in dismissing the suit under s. 127 Act VIII of 1859.—2 W. R. 161.

6. A Magistrate cannot refuse to permit an accused to attend at the sessions by —.—2 W. R., Cr., 50 (4 R. J. P. J. 357).

7. The High Court will not interfere with Zillah Judges in the selection and admission of Mookhtars under cl. 39 of the new Pleaders' and Mookhtars' Rules.—5 W. R., Mis., 49.

8. Intention and meaning of the same rule relative to the admission of Mookhtars.—6 W. R., Mis., 29.

9. There is no limitation of time for the grant of a certificate by a Judge under the same rule.—6 W. R., Mis., 120.

10. The mere bringing a plaint to a vakeel for his signature by a — not duly qualified, is not an acting as a — which renders the party liable to a fine under s. 13 Act XX of 1865.—6 W. R., Cr., 29.

11. The Judge of a Small Cause Court has no jurisdiction in such a matter unless the plaint was one to be presented to his Court.—*Ib.*

12. A mookhtarnamah under seal is as valid as one under signature. A Judge is not bound to require proof of the genuineness of the seal.—7 W. R. 475.

13. A mookhtarnamah was held to be invalid, there being no legal proof of its execution, and the whole of the transactions relative to the execution being of a very questionable character.—8 W. R., P. C., 22.

14. There is nothing in Act XX of 1865 to restrain any person from supplying information to the vakeels in the presence of the Judge. The word "appearance" does not mean actual presence before the Judge in Court, *e.g.* of a — standing behind the pleader.—10 W. R. 355.

15. A general — must be considered to have a certain discretion, unless the contrary is shown, to do such acts as come within the ordinary scope of his duty with authority.—14 W. R. 36.

16. Before a Magistrate can suspend a —, he must observe the requirements of s. 16 Act XX of 1865.—15 W. R. 171; 17 W. R., Cr., 6; 21 W. R., Cr., 41.

17. Suspension or dismissal of — under ss. 15 and 16 Act XX of 1865.—16 W. R., Cr., 15.

18. Case of a — who was reinstated by the High Court to his practice after suspension.—16 W. R., Cr., 41.

19. Renewal of certificate to — to practise in another district.—18 W. R. 295.

MOOKHTAR (*continued*).

20. The mere writing of a petition for a party who afterwards presents that petition himself, is not "acting" as a — in a Criminal Court within the meaning of s. 11 Act XX of 1865.—18 W. R., Cr., 27.

21. The word "act" in s. 5 Act XX of 1865 means the doing something as the agent of the principal party which shall be recognized or taken notice of by the Court as the act of that principal. There is nothing to prevent a person as private agent from going between the prisoner or the duly authorized vakeel.—19 W. R., Cr., 8.

But according to s. 11, a — can "act," but not "plead," *e.g.* present an application for execution under s. 207 Act VIII.—24 W. R. 233.

22. Where a party resists liability for a deed of sale executed by his own —, it is necessary for the purchaser claiming under that deed to show that the — had authority either by virtue of a general or special power of attorney to execute that deed, and to bind his principal by executing it.—20 W. R. 119.

See Appeal 102.
Appearance 1.
Attorney and Client 2, 4, 6, 16.
Champerty 12.
Damages 98.
Evidence 8, 63, 64.
Forgery 11.
Jurisdiction 13, 364, 456.
Limitation (Act XIV of 1859) 138.
Manager 11.
Onus Probandi 133.
Pleader 18, 20.
Practice (Amendment) 6.
,, (Appeal) 29.
,, (Execution of Decree) 209.
Principal and Agent 8.
Purdah-women 2.
Rules of Practice 7, 15, 26, 29, 37*a*, 39, 42.
Sale 75.
Service 5.

Moonsiff.

Removal of —.—*See* High Court 128, 129.

See Jurisdiction 494.

Moorshedabad.

Nawab Nazim of —.—*See* High Court 153, 175.

See Hoondee 6.

Moostagir.

See Enhancement 65.
Mesne Profits 35.
Occupancy 85.

Mortgage.

1. A deposit made in Court during foreclosure by mortgagor with a prayer that it be kept pending enquiry as to the amount due, is not a legal tender.—W. R. F. B. 14 (1 Hay 76; Marshall 45).

2. In a suit by a mortgagor against a mortgagee to recover possession of property mortgaged under a zur-i-peshgee lease, the only question at issue was held to be whether all the debts had been paid, or whether the plaintiff could re-enter. The correctness of the account might be questioned by the defendant in any future suit.—W. R. F. B. 53 (1 Hay189, Marshall 112). *But see* 18 W. R. 65.

As to payment of the whole debt.—*See also* 22 W. R. 262.

3. So long as the relation of mortgagor and mortgagee exists between the parties to a suit, the law of limitation will not apply to the case.—W. R. F. B. 37 (1 Hay 219).

4. When the original transaction is an usufructuary —, the mortgagee is entitled to nothing beyond the re-payment of his principal and interest from the usufruct of the property. The Court will not allow additional advantages to be obtained, through the necessity of a debtor, by the conversion of a — into a transaction of a different nature. Once a — always a —, is a principle not to be departed from. Consequently an estate mortgaged is always redeemable.—W. R. F. B. 79 (2 Hay 256).

5. Under s. 11 Reg. XV of 1793, a mortgagee in possession is bound to produce the accounts of collection and disbursement, and to swear to them. A plea of "no assets" will not exempt him from acting up to these requirements. —1 Hay 182, 5 W. R. 53. *See also* 89, 92 *post*.

6. A mortgagee is not bound to serve notices to all claiming rights under a mortgagor.—1 Hay 195. *But see* 19 W. R. 170.

7. In a suit for possession of land after foreclosure of —, neither Reg. XVII of 1806 nor any other law requires the mortgagor to deposit any extra charges (*e.g.* costs) between the parties, over and above the principal and interest. —1 Hay 373 (Marshall 167).

8. In 1835 A, a mortgagee, obtained a decree in a foreclosure suit, subject to two prior mortgages. In 1844 B purchased the rights of the mortgagor in the mortgaged property, and in 1854 redeemed the two prior mortgages. *Held* that A was not barred by limitation from asserting his title to the land, subject to the prior mortgages.—1 Hay 437 (Marshall 191).

9. The Judge below dismissed the suit brought upon a bond with interest, at the time of the execution of which bond an assignment was given to the plaintiff in the rent of certain mehals farmed out to other parties, ruling under s. 9 Reg. XV of 1793 that a deduction of a certain sum from the jumma of the assignment was a decree to gain more interest than the legal rate. *Held* on appeal that that section did not apply where the transactions of the bond and of the assignment were one and the same and where the plaintiff has a claim to be treated as an usufructuary mortgagee under s. 10 of the same law.—1 Hay 483.

10. By a zur-i-peshgee lease granted upon the advance of 5,517Rs., the lessee was to hold possession of certain villages for the term of 5 years and to pay himself out of the proceeds of the villages *interest* on the loan; and the lessor undertook not to mortgage or alienate the property during the term, and not to oust the lessee, or, if he did that, he would pay him 1000Rs. Before the expiration of the term, the villages were taken in execution, and sold under a decree at the suit of a third party, and the lessee turned out of possession. *Held* that the lessee had no claim against the villages for the principal money, and that the 1000Rs. were forfeited.—1 Hay 532 (Marshall 209).

11. A mortgagor who has recovered possession of the mortgaged property by the deposit of the principal sum lent under Reg. I of 1798, is, in a suit subsequently brought by him for the adjustment of accounts during the period the mortgagee was in possession, entitled to force the defendant to file his account and swear to it according to Reg. XV of 1793.—2 Hay 17.

12. A mortgagee need not serve a notice of foreclosure upon the purchaser of the equity of redemption after one has been served upon the mortgagor.—2 Hay 152 (Marshall 292).

13. Much less is such purchaser entitled to notice in a foreclosure suit, if the purchase has not been made until after the institution of the suit.—*Ib.*

14. One co-sharer of a joint estate cannot sue, in respect of his particular share, to get rid of a — entered into jointly by all the co-sharers.—2 Hay 155, 10 W. R. 476.

15. An advance was made of 933Rs. on a farm for 7 years at a yearly rent of Rs214-4, from which a deduction of Rs111-15 was to be made on account of interest, and it was further stipulated that if, on the expiration of the lease, the loan was not repaid, the lease should continue. *Held* that the transaction was a —.—2 Hay 159. *See* 8 W. R. 310.

16. A mortgagor cannot retake possession of the mortgaged property by the payment of the mortgage-money to a third person, but must proceed to redeem it under Reg. I of 1798.—2 Hay 166.

17. Service of notice of foreclosure against an infant is not legal and valid unless it is served upon his or her lawful guardian.—2 Hay 196 (Marshall 313).

MORTGAGE (*continued*).

18. In a suit for possession after foreclosure, it is no good defence that a portion of the — money was not paid for, when the money actually due was not tendered during the foreclosure proceedings.—2 Hay 231.

19. A mortgagee who sues for possession after foreclosure, is entitled to mesne profits from the date of the foreclosure decree.—*Ib.*

But he cannot sue the ryots for rent which they may have paid to the party in possession.—12 W. R. 35.

20. A coparcener of a mehal mortgaged to the defendant, in suing the latter for an account on the allegation that the — debt has been satisfied from the usufruct of the property, must make his other coparceners parties to the suit.—2 Hay 379.

21. The admission of a mortgagor, after his property has passed to a third party, is not admissible as evidence against such third party.—2 Hay 390.

22. The purchaser from the mortgagor of the equity of redemption in the mortgaged property is not entitled to notice of foreclosure, previous to a foreclosure suit instituted by the mortgagee, but it is sufficient if such notice is given to the mortgagor.—2 Hay 408 (Marshall 337).

23. While a mortgagee was in possession of the mortgaged premises, the lands were sold for arrears of Government revenue and purchased by the mortgagee. *Held* that his possession as mortgagee was superseded by his possession as purchaser, and that limitation commenced to run from the beginning of his possession as such purchaser.—2 Hay 475 (Marshall 391).

24. The heirs of a deceased Mahomedan mortgaged some property of their ancestor. After the — a judgment-creditor in respect of a debt due from the estate of their ancestor, attached and sold the mortgaged property in execution of his decree. *Held* that the sale was subject to the — .—*Held* also that the question with respect to the powers of the heirs, and the rights between the latter, was to be determined, not by Mahomedan law, but by the principles of justice, equity, and good conscience. *Semble* that even if the Mahomedan law applied, the sale in execution would be subject to the —.—Marshall 509. *See also* 14 W. R. 239.

25. A mortgagee under a simple — cannot assert his lien on the mortgaged property, unless so expressly provided for in the decree passed in his favor on his — bond, as against a mortgagee under a conditional sale, who has foreclosed. —2 Hay 625.

26. It is not sufficient for a mortgagee to swear to the accounts of the putwarrees, which may be very useful as corroborative proof, but can never be taken in place of the accounts which every mortgagee is required by s. 11 Reg. XV of 1793 to keep and to deliver in on oath.—2 Hay 627.

27. Where interest is not reserved by the — deed, but it provides for repayment of the principal only, a payment into Court, within a year after the institution of a foreclosure suit, of the principal only without interest, satisfies, s. 7 Reg. XVII of 1806 and entitles the mortgagor to the redemption of the property.—Marshall 617. *See* 14 W. R. 278.

28. A deed of sale executed in 1201 was subject to the condition that, if the vendors from 1202 to 1203 should repay the whole of the consideration-money, they should receive back the deed of sale, which should then become null and void; and if within the said period they should fail to pay the said consideration-money, the conditional sale should become absolute and be considered irrevocable. *Held* that Reg. XV of 1793 did not operate to prevent the assignment becoming absolute after the expiration of the time limited for repayment of the consideration, and that Reg. XVII of 1806 had not a retrospective effect and therefore did not apply; and that even if the entire amount of the purchase-money were satisfied out of the proceeds of the estate before the time for the conditional sale becoming absolute, the vendees would acquire a perfect title.—Marshall 632.

29. An estate was bought *benamee* in the name of A by the father of A. After the father's death a sum of money was raised by bill of conditional sale signed by A as proprietor and his brother B as *mutullah*. Afterwards, upon the death of B, and after B's heirs had separated from A, A raised a further sum by a bill of sale, reciting the former bill of conditional sale and that the additional sum was raised to discharge the same. *Held* that if the grantee took with notice that he was entitled to a half share only of the estate, the additional charge would operate as a — of such half share only; but that portion of the money for which the original bill of sale was given was a charge on B's share as well as on the possession of his heirs.—Marshall 651. *See* 17 W. R. 480.

30. Though in Hindoo law it is doubtful whether a sister is legal heir to her brother or not; yet where a sister sued to redeem a — made by her deceased brother in favor of the defendant's late husband, and the defendant had herself recognized the plaintiff as the real representative of her brother, had put in force against her decrees of Court against the brother, and had compelled the plaintiff to pay them, the Court held it only equitable that she should be allowed to pay the defendant upon the — also.—Sev. 71.

31. In the above suit another sister's sons intervened and asserted superior rights to their aunt's to redeem the —; but as they did not sue with money in their hand, as their aunt had done, to redeem the —, the Court dismissed their appeal, considering that it looked very much as if they wished, in collusion with the mortgagee, to prevent her from redeeming, but without prejudice to them, if they so wished, to contest with their aunt the right to the mortgaged estate.—Sev. 61.

32. No limitation applies as between the mortgagor and mortgagee in possession.—Sev. 62.

The mortgagee's possession is not adverse to the mortgagor; and possession through a mortgagee is sufficient for the purpose of bringing a claim under s. 230 Act VIII.—20 W. R. 373.

33. Defendant borrowed money of plaintiff on the security of his estate, and made an assignment on the lessee of his estate to pay plaintiff as per instalments noted in the bond. Plaintiff sued for balance of certain lapsed instalments, and the defence was that the suit was premature until end of lease, that the lease was *benamee*, and that no suit would lie for lapsed instalments. *Held* that, if the lease was *benamee*, the transaction must be viewed as an usufructuary —, and that the suit in its present shape, for recovery of a lapsed instalment, would not lie.—Sev. 244.

34. Where ancestral property is mortgaged, it is sufficient for the lender to be satisfied that there was a pressure on the estate to justify the loan.—Sev. 251.

And he should lend only to the extent of a legal necessity. —13 W. R. 457.

35. A — creates a right of property or special lien on the land mortgaged, which can only be divested by the mortgagee's own act or by the actual satisfaction of the — debt. It cannot be affected by any proceeding to recover the debt until the debt is satisfied. The mortgaged property, if it remain in the hands of the debtor, may be seized and sold under the money-decree.—Sev. 323. *See* 225 *post.*

36. Suits for recovery of the — debt, and to enforce the lien or right of property in the land created by the — against a second incumbrancer, are distinct and not identical, and may be instituted.—*Ib.*

37. Where a mortgagee agrees to take the usufruct in lieu of his interest, he has no right to an account; but the mortgagor who has a right to one under s. 10 Reg. XV of 1793, may be allowed to redeem on payment of the — debt. —Sev. 333.

38. If a mortgagee accepts as satisfaction of his interest an assignment of certain rents due to the mortgagor from a ticcadar, the mortgagee's claim to interest must be taken to be satisfied to the extent of those rents even though he may never have actually received the rents from the ticcadar.—Sev. 335.

39. As Reg. XVII of 1806 is silent as to the costs of the notice of foreclosure, a mortgagor is not bound to pay them unless so expressly provided for in the — deed.—*Ib.*

40. Where a mortgagor pays into Court as principal and interest a sum which the mortgagee could not venture to take out of Court without peril to his security, the mortgagor is not entitled to deduct interest on such sum.—*Ib.*

41. Where plaintiff borrowed from defendant 11,000Rs. and made an absolute deed of sale accompanied by a written *ikrarnamah* (the most common practice in India of providing for an equity of redemption), making the transaction nothing but a redeemable sale identical with a —, although there was the expression that the 11,000Rs. should

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be repaid by a deposit of the amount with interest, and that the profits were to accumulate at interest until the loan was repaid, and then refunded to the borrowers, the Court held the transaction to be of the character of a —.—Sev. 545.

42. A second mortgagee may, if he pleases, redeem the first—; but he has no right, in a suit against the mortgagor, to a decree for the sale of the property in satisfaction of the several incumbrances upon it.—Sev. 573.

43. Ordinary zur-i-peshgee transactions, so common in Behar, are usually treated as usufructuary.—Sev. 717. 8 W. R. 310.

But the lessee is not entitled to have the property sold in satisfaction of the — in the same manner as if there had been an ordinary —.—13 W. R. 445. *See* 20 W. R. 178.

44. Where a first mortgagee sued his debtor upon his bond and remained satisfied with a mere money-decree, he was considered to have waived his right to bind any particular property as liable under the bond. The decree superseded the bond; and if the decree did not declare any property liable for its amount, there was no lien. The auction-purchaser therefore who bought the debtor's rights and interests, took them subject to the second — but with the right of redemption.—Sev. 885.

45. The omission by the Court to send with a notice of foreclosure a copy of the mortgagee's petition, as required by s. 8 Reg. XVII of 1806, does not make void the foreclosure where mortgagor subsequently lives in the neighbourhood of the property, and mortgagee uses it without objection or claim on the part of the mortgagor.—W. R. Sp. 36. *See* 265 *post*.

46. Directions as to the nature of accounts to be taken in a suit for possession of property the subject of a zur-i-peshgee —, and as to the form of suit in such a case.—W. R. Sp. 44.

47. The notice of foreclosure under s. 8 Reg. XVII of 1806 is not merely a preliminary, but is itself the operative act in the foreclosure proceeding. The service of the notice, therefore, should be evidenced by the clearest proof, and be such as to leave no doubt that the notice must have reached the hands, or come to the knowledge, of the mortgagors.—W. R. Sp. 49.

48. Possession by mortgagees cannot be adverse to the heir of the deceased mortgagor, so as to make limitation apply.—W. R. Sp. 68.

49. A mortgagee is entitled to hold possession till the debt has been fully paid, and no representative of the original mortgagor claiming any fractional portion in the mortgaged property, can sue to redeem his separate share without proof of the satisfaction of the entire debt.—W. R. Sp. 75.

50. Where, in order to save an estate from sale in execution of a decree against the testator, his executor raises a loan on the — of the property and saves it from sale by successive mortgages of which the last is to the plaintiff, the latter's claim against the estate is not invalidated even if the executor had other funds to pay the debt, unless plaintiff knew of those funds or might have known by ordinary diligence.—W. R. Sp. 99.

51. According to s. 10 Reg. XV of 1793, the Court should take an account of the receipts of the mortgagee in possession and adjust the — account of principal and interest.—W. R. Sp. 109.

52. A mortgagee, acquiring by the operation of law possession of an estate mortgaged by a Hindoo father without the son's consent, is bound to enquire whether the debt on account of which the — is given is a necessary one.—W. R. Sp. 143.

53. Where a deed of — is silent as to interest, payment of the bare principal within the year of grace is sufficient to bar foreclosure.—W. R. Sp. 157.

54. A decree of the Supreme Court cannot be impeached in a suit brought in the Zillah Court to recover possession of mortgaged property.—W. R. Sp. 159.

55. Exposition of the nature of the accounts to be kept by a mortgagee in possession.—W. R. Sp. 177; (P. C.) 18 W. R. 81.

56. Where money is neither tendered nor deposited prior to the date fixed for the payment of a — in the nature of a *bye-bil-wuffa*, the mortgagor loses, under Reg. I of 1798, his right of redemption. The benefit of Reg. XVII of 1806 cannot be applied to mortgages made prior to Reg. I of 1798.—W. R. Sp. 183.

57. Payment by order of the Judge into the Collector's treasury, before the expiration of the year of grace, of a debt due to a mortgagee, entitles the borrower to redeem.—W. R. Sp. 184.

58. Reg. XVII of 1806 came into operation in the district of Chupra on the 11th September 1806.—W. R. Sp. 189. (*Over-ruled*) *see* 149 *post*.

59. Indulgence or waiver of rights between a mortgagor and mortagee cannot be carried beyond those parties.—*Ib.*

60. A mortgagor who omitted to plead in the foreclosure suit that he did not obtain the whole of the consideration money, cannot set up that plea in the subsequent suit for possession.—W. R. Sp. 206.

61. A mortgagee in possession, in paying the Government revenue to save the estate, has a claim on the mortgagor who was bound under the — deed to pay the revenue.—W. R. Sp. 209.

62. Where the decree of the first Court does not define with certainty the property in respect of which the mortgagee is declared entitled to foreclose, the Lower Appellate Court should either itself remedy the defect or remand the case for that purpose.—W. R. Sp. 215.

63. A mortgagor cannot redeem a share of the mortgaged property. This rule is not affected by the sale of part of the mortgaged lands for arrears of revenue.—W. R. Sp. 216.

64. A mortgagor under a zur-i-peshgee is entitled, under s. 2 Reg. I of 1798, to demand back his land immediately after making his deposit; his demanding more land than is comprised in the — does not justify the mortgagee in keeping possession of what is comprised in it.—W. R. Sp. 219.

65. Where rent-free property granted in zur-i-peshgee lease is resumed by Government, if the mortgagee does not call in his money or make a fresh agreement, he must be regarded as assenting to receive the profits *minus* the Government revenue as security.—W. R. Sp. 227.

66. A mortgagee's absolute right and his claim to pre-emption arise from the time the sale becomes absolute.—W. R. Sp. 285 (L. R. 67).

67. Where two persons jointly hold a — in equal shares and the equity of redemption becomes vested in one of them, a notice of foreclosure confined to a one-half share only is sufficient, and the foreclosure proceedings will not be bad because they relate to only a part and not the whole of the mortgaged property.—W. R. Sp. 285.

68. Notice of foreclosure should be served on the mortgagor or his legal representative.—W. R. Sp. 298.

The omission to do so vitiates the whole of the foreclosure proceedings.—15 W. R. 263.

What is a proper issue of notice of foreclosure on the representatives of a deceased mortgagor.—17 W. R. 230.

69. Where a portion of the mortgaged property is sold to satisfy a decree-holder's prior claim, the balance (if any) of the sale proceeds will go in diminution of the mortgagee's claim.—W. R. Sp. 298.

70. Where a person obtains a decree upon a deed which hypothecated certain property for a debt, and such property is sold by his debtor, he cannot sue to enforce that debt as a — against the same property.—W. R. Sp. 325 (L. R. 102). *See also* 14 W. R. 209.

71. A plaintiff suing for redemption on the ground of holding in right of dower, cannot, in special appeal, claim to redeem on the ground of being heir to the mortgagor.—W. R. Sp. 326 (L. R. 103).

72. A — made by way of security for money advanced remains in force until the debt is satisfied, and a decree may be obtained by mortgagee without regard to the proceeding of any subsequent mortgagee or purchaser. A subsequent purchaser by payment of an earlier —, and by obtaining a decree for the money so paid, does not acquire any rights belonging to that —.—W. R. Sp. 345 (L. R. 121). *See* 17 W. R. 480.

73. Where an auction-purchaser at a sale in execution of a mortgagor's rights forcibly dispossesses the mortgagee, the mortgagor is not liable for such illegal acts.—W. R. Sp. 348 (L. R. 124).

74. A mortgagor is not entitled to a decree for redemption so long as anything is due upon the —.—W. R. Sp. 349 (L. R. 125). *See* 9 W. R. 572.

75. Where one of several mortgaged estates is sold in

MORTGAGE (*continued*).

execution of a money-decree by a third party, the mortgagee must try and recover his dues from the remaining estates, and the balance, if any, from the sold estate.—W. R. Sp. 374 (L. R. 147).

76. The rule that the date of expiry of the year of grace is the date from which a mortgagee's cause of action to obtain possession of the mortgaged estate is to be calculated, applies only where the mortgagor remains in peaceable and undisturbed possession of the estate. But where the mortgagor is dispossessed and his title disputed, and another person obtains possession of the estate, the possession of the new holder becomes adverse to both mortgagor and mortgagee. The mortgagee's cause of action against the new holder will count from the date on which the latter obtained such adverse possession, unless where the mortgagor contests the title of the new holder and a litigation ensues between them, in which case the mortgagee is not bound to take action upon his — until that litigation is decided. But if the mortgagee's title is rejected and his possession is disturbed by an adverse one, the mortgagee's cause of action against the new holder commences from the date on which the latter obtains possession on his title adverse to the mortgagor, which has been confirmed by the Courts.—W. R. Sp. 375 (L. R. 148).

77. Where an usufructuary mortgagee has compromised his claim to mesne profits from the mortgagor's estate (which was taken under management by Government) by accepting in lieu a money-payment from Government, he cannot again claim from the lessee the rents paid by the latter to Government.—W. R. Sp. (Act X) 65.

78. A mortgagee who stipulates to pay a mortgagor a certain amount annually as rent, is so far a tenant, and liable to be sued for arrears under Act X of 1859.—W. R. Sp. (Act X) 93 (3 R. J. P. J. 22).

79. Two agreements entered into by the same parties on the same day, one providing for a conditional sale, and the other reducing the plan of conditional sale to a —, were held not to be inconsistent so as to make the second an invalid instrument.—(P. C.) 5 W. R., P. C., 117 (P. C. R. 79).

80. To entitle a person to claim as equitable mortgagee, it is not sufficient to show that he paid off the original —, but also that it was his own money that was paid, or that he was to stand in the position of the original mortgagee. —(P. C.) 5 W. R., P. C., 124 (P. C. R. 88). *See also* 17 W. R. 480.

81. A — of the revenues of a village was executed by a firm, one of whose partners did not execute the — but was afterwards cognizant of it, and having sued his co-partners, obtained a decree for his share of the assets of the firm, in execution of which decree an attachment issued against the estate. The mortgagee having sued for the removal of that attachment, it was held that the — was valid up to the time of notice of respondent's claim (*i.e.* when he proceeded to enforce that claim by attachment and when he came to be in the situation of a second incumbrancer); and that if, after that time he permitted the mortgagors to receive any portion of the produce of the estate, he ought, as to the moneys so received, to be postponed to the subsequent incumbrancer.—(P. C.) 6 W. R., P. C., 10 (P. C. R. 109).

82. According to s. 8 Reg. XVII of 1806, where mortgaged property is situate in two districts, an order of foreclosure relating to the whole property may be obtained in the Court of either district.—(P. C.) 7 W. R., P. C., 66 (P. C. R. 207).

83. The order of foreclosure having been served on the widow of the deceased mortgagor, who had a life interest and also was the guardian of the minor adopted son and legal representative of the deceased, the service was held to be sufficient.—*Ib.*

84. A person, having an equitable — in certain villages of which the legal title was in the mortgagee's son, instituted a suit against the mortgagor to recover the amount of his demand. Pending the suit, and while the son, the representative of the mortgagor, was a party to it, the Collector sold the property as if it were the son's unincumbered estate, suppressing all mention of the — (of which he had notice) in the advertisement of sale, conveyed away the estate to the purchaser as unincumbered, and received the full value as if it were free from —. *Held* that the Collector was liable to repay the amount which had been realized by the sale.—P. C. R. 281.

85. Bye-bil-wuffas or kut-kubalas are redeemable like an ordinary —. Limitation and mode of procedure in such cases.—(P. C.) 4 W. R., P. C., 37 (P. C. R. 367). *See also* 22 W. R. 543.

86. Tender of — money, when valid and when not.—*Ib.* *See also* 25 W. R. 259.

87. A — executed by an insolvent who has not obtained a certificate and discharge, is subject to the lien of the mortgagee in priority to the claim of the Official Assignee under the insolvency.—(P. C.) 4 W. R., P. C., 61 (P. C. R. 426).

88. The Sudder Court should not have decided the equity of redemption on the question of foreclosure, when that question, though raised upon the pleadings, was not made an issue in the first Court.—(P. C.) 1 W. R., P. C., 19 (P. C. R. 533). *See* 11 W. R. 544.

88*a*. If a sale takes place before notice of foreclosure is filed, the notice, to be effectual, must be served on the purchaser.—*Ib.* *See also* 23 W. R. 96.

89. Accounts how to be taken.—*Ib.* *See* 92 *post.*

90. Law of foreclosure in Bengal explained.—(P. C.) 5 W. R., P. C., 47 (P. C. R. 621). *See* 10 W. R. 478, 13 W. R. 44, 16 W. R. 251.

91. Suit by purchaser under deed of conditional sale for possession and mesne profits of the mortgaged premises of which he is already in possession under a benamee lease to his son.—*Ib.*

92. Production of accounts by mortgagee in possession. —*Ib.* *See also* 5 W. R. 271; 6 W. R. 84, 127; 7 W. R. 30, 82, 244; 9 W. R. 572; 10 W. R. 367; 11 W. R., P. C., 19; 14 W. R. 66; (P. C.) 18 W. R. 81; 24 W. R. 275. *See* 5, 89 *ante.*

93. Sudder Court's order remanding suit for re-trial on the production of the accounts, was an interlocutory one, and plaintiff's omission to appeal against it did not preclude him from now insisting that the remand for the production of the accounts was erroneous, or that the cause should have been decided in his favor notwithstanding his non-production of the accounts.—*Ib.*

94. The effect of a foreclosure decree in the Supreme Court in a — suit between Hindoos is equivalent to a decree establishing proprietary right, in the Mofussil Courts, in similar suits on the like instruments.—(P. C.) 5 W. R., P. C., 83 (P. C. R. 635).

95. A suit for redemption and for possession instituted many years after a fraudulent sale for arrears of revenue is not barred by s. 24 Act I of 1845.—*Ib.* *See* 10 W. R. F. B. 51.

96. A fraudulent purchase by the mortgagee in possession of the mortgaged estate at a sale for arrears of revenue will not defeat the equity of redemption.—*Ib.* *See also* (P. C.) 21 W. R. 233.

97. Construction of Act VI of 1855 in a suit for redemption.—1 Hyde 289.

98. Where the lessees under a zur-i-peshgee lease are the accounting parties, no account is necessary from the mortgagor.—1 W. R. 11.

99. Second mortgagees, failing to preserve their lien on the estate by paying off the debt due on the prior —, cannot complain against the first mortgagee for taking advantage of the right which the law gives him of enforcing his claim against the mortgaged property.—1 W. R. 19.

100. Plaintiff in possession under an usufructuary — and suing for the balance due, is bound to prove non-realization of his claim from the usufruct.—1 W. R. 28.

101. An extension of the time for payment, allowed by the mortgagee through the Court, does not necessitate proceedings being taken *de novo* or a fresh notice of foreclosure being served.—1 W. R. 44. *See also* 10 W. R. 326, 20 W. R. 176.

102. Proprietor has no power to give a — to a third party of property already given in putnee.—1 W. R. 61.

103. A deed of sale cannot, by reason of a verbal agreement, be regarded as a —, when it is not alleged that the mortgagor was induced by mistake or fraud to sign the deed of sale, and when the purchaser from the mortgagor sues for redemption with the full knowledge that his vendor had already executed a deed of sale to the defendant. —1 W. R. 76.

104. A suit by mortgagee for possession after foreclosure of a — which was made under a fabricated will, must be decreed in favor of plaintiff when he had in good faith advanced the consideration-money to discharge a debt

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contracted by original owner.—1 W. R. 91. *See also* 17 W. R. 480.

105. Mortgagor's interest in property ceases after — is foreclosed.—*Ib.*

106. No deduction for time occupied in suit for foreclosure of a — allowed to an execution-creditor who suppresses all mention of the — in his petition for execution.—1 W. R. 103. *See* 16 W. R., P. C., 19.

107. The proper sum to be allowed a mortgagee for *surinjamee* is what he has actually spent as expenses of his management.—1 W. R. 133.

108. No decree to be given against a person as being the real mortgagee, without evidence of the *benamee* holding.—*Ib.*

109. A mortgagee is entitled to interest on account of the balance of putnee rents paid by him.—*Ib.*

110. A prior — established (as made *boná fide*) against a purchaser of the insolvent's rights from the Official Assignee.—1 W. R. 137.

111. A foreclosure decree cannot give the mortgagee a title against a person who was not a party to the suit, or deprive such person of the right of redemption acquired by purchase of a portion of the mortgaged property.—1 W. R. 175.

112. A ticcadar of mortgagee purchasing mortgagor's rights does not necessarily become mortgagor in possession.—1 W. R. 201.

113. The right of a mortgagee without possession to foreclosure does not cease 12 years after the alleged —.—1 W. R. 239.

114. A mortgagee in possession is not entitled to receive any share of the sale proceeds of the mortgaged property sold for arrears of Government revenue, except to the extent that he shows that the usufruct of the property, while he held the —, has not satisfied his debt.—1 W. R. 270.

115. The legal position of a mortgagee after foreclosure is not impugnable except on clear proof of collusion and fraud.—1 W. R. 272.

Over-ruled by Privy Council who upheld the finding of the Lower Court that the — was not a *boná fide* transaction because it was not only necessary for, but in the power of, the mortgagee to produce better evidence than he had given to establish the reality and *bona fides* of the transaction.—17 W. R. 9.

116. A mortgagee after foreclosure is entitled only to so much of the property of a joint family as belongs to those members of the family with whom he is dealing.—1 W. R. 334.

117. Position and title of a purchaser at a sale for arrears of revenue of property which, after its hypothecation to Government as security, had been mortgaged, the registration of the — having been effected prior to that of the security.—1 W. R. 353.

118. When mortgagee may sue for consideration-money.—1 W. R. 366.

119. Mortgagee in possession required to account to mortgagor before foreclosure.—*Ib.*

120. Mortgagor liable to mortgagee, notwithstanding alleged ownership by a third party.—*Ib.*

121. An auction-purchaser who buys an estate with full knowledge of a prior —, buys subject to the —.—1 W. R., Mis., 8. *See also* 10 W. R. 291, 14 W. R. 233, 21 W. R. 270.

122. Property standing in the name of a wife may be sold by mortgagee in satisfaction of a decree against her deceased husband, even after the — debt has been paid off, if discovered to be really the husband's.—2 W. R. 29.

123. A *boná fide* mortgagee without notice, who has foreclosed, is not affected by any arrangement between the mortgagor and other parties.—2 W. R. 64.

124. In a suit for redemption by heir of mortgagor, defendant is at liberty to show that mortgagor was only a trustee for other parties who had subsequently executed a further charge to him (defendant).—2 W. R. 70.

125. A purchaser of a money-decree obtained by a mortgagee, is entitled to have the rights and interests of the mortgagor, as they were at the date of the —, sold in satisfaction of his claim, in preference to that of subsequent mortgagees.—2 W. R. 130.

126. It is the duty of a mortgagee of a fractional share of an estate held in joint tenancy to see that he receives out of the estate all that the mortgagor ought to have received.—2 W. R. 150.

127. One of several joint mortgagors can sue alone to redeem, without the extent of his share being determined.—*Ib.*

128. In a suit to recover a share of mesne profits collected over and above the mortgagee's claim, the plaintiff is not bound to sue in conjunction with his co-mortgagors. The Court may, under s. 73 Act VIII of 1859, direct them to be made co-plaintiffs and try the case with reference to all the interests concerned.—2 W. R. 254.

129. A prior security by unregistered contract and without any conveyance of the land does not give a preferential title over a second mortgagee who obtained a conveyance of the land for valuable consideration and without notice, and has foreclosed the mortgage.—2 W. R. 286.

130. There is no law restricting a mortgagee to the receipt by way of interest of the amount of principal lent. The mode of calculation is every year to add the amount of interest to the principal sum, and then deduct the usufruct.—2 W. R. 289.

131. No suit lies for the recovery of possession of lands which have passed in execution of a decree for possession after foreclosure of —.—2 W. R. 300.

132. When invalid lakheraj, pledged as lakheraj, is assessed with revenue, the usufructuary mortgagee has a lien on the mortgagor for money paid in discharge of the public revenue.—3 W. R. 6.

133. A lien on property obtained by a previous — has legal priority over that arising out of a later —.—3 W. R. 110. *See also* 7 W. R. 232, 18 W. R. 279, 25 W. R. 187. *But see* 10 W. R. 291. 14 W. R. 233, 17 W. R. 480.

134. A purchaser of the right of redemption of a mortgagor may sue without tender out of Court of the — debt to the mortgagee. The tender of the money out of Court only affects the purchaser's right to recover his costs.—3 W. R. 128.

135. A mortgaged property, burdened with the payment of an entire debt to two shareholders, is liable to sale at the instance of both creditors separately, so long as their claims remain unsatisfied.—3 W. R. 130.

136. B and Co., mortgagees with power to sell, sold the mortgaged property to the defendants. No deed was executed until some years afterwards when the mortgagor was dead. The deed was in the form followed when a mortgagor is the vendor and the mortgagees join in the conveyance; but the words of conveyance were by the mortgagees alone and without any confirmation by the mortgagor. *Held* that the purchaser did not, by the deed, acquire an indefeasible estate.—3 W. R. 157.

137. A mortgagee is not entitled to claim a deduction on account of Government revenue paid by him in his capacity of proprietor.—3 W. R. 162.

138. A mortgagor of lakheraj land subsequently assessed with Government revenue is not entitled to redeem except on payment of the amount paid by the mortgagee to Government for revenue with interest, in addition to the money due under the —. But in a suit for redemption, in which the mortgagor deposited before suit the amount of the principal sum borrowed by him, he is entitled to a decree on payment into Court of the further sum paid for Government revenue.—3 W. R. 174.

139. A deposit of the — money by the mortgagor, accompanied by a protest and threat to sue, does not render the tender invalid.—3 W. R. 184. (*Over-ruled*) *see* 157 *post.*

140. A deposit duly made saves the mortgagor's equity of redemption, whether mortgagee receives notice or not.—*Ib.*

141. In what cases notice of foreclosure should be given to private purchasers of a mortgagor's equity of redemption as his legal representatives under s. 8 Reg. XVII of 1806.—3 W. R. 230, 6 W. R. 230, 10 W. R. 86, 11 W. R. 544, 548, 19 W. R. 170, 23 W. R. 25, 96. 25 W. R. 139. *See* 12 W. R. 105.

142. Where a — is a charge on the whole estate, before the — can be removed from any part of the estate, the whole — debt must be paid off.—3 W. R., Mis., 4.

143. The prior foreclosure of a subsequent mortgagee does not relieve the property of the first mortgagee's lien.—4 W. R. 1.

144. *Quære.* Whether the second mortgagee is the mortgagor's legal representative for the purpose of the notice of foreclosure under s. 8 Reg. XVII of 1806.—*Ib.*

Ruled in the affirmative (on the authority of 1 W. R., P. C., 19 and 15 W. R., P. C., 35).—22 W. R. 475.

145. Where the first mortgagee had no knowledge of the

MORTGAGE (*continued*).

second — or of the foreclosure proceedings taken under it, the second mortgagee cannot complain of service of notice on mortgagor.—4 W. R. 1.

146. In a sale of the equity of redemption, if the debtors are duly warned by notice that their property will be put up to sale in satisfaction of a decree, and they do not appear or take steps to satisfy the debt and retain their equity of redemption, their equity of redemption is liable to be extinguished when there is no proof of fraud.—4 W. R. 5.

147. Where a plaint calls for the realization of a —, and the judgment, although it does not in terms order the sale of the mortgaged property, yet directs that the plaintiff's claim should be granted, the sale which follows in execution of the decree passes to the plaintiff the actual property which was mortgaged.—4 W. R. 32.

148. A first mortgagee is not bound to warn a second mortgagee that he has a previous lien on the property.—4 W. R. 45. *See* 7 W. R. 232.

149. Reg. XVII of 1806 took effect, not from the date of its passing, but from the date of its promulgation.—(F. B.) 5 W. R. 88.

150. A nephew who is living with and has always acted as agent of his uncle, the manager of a joint family, cannot repudiate a — by the uncle without proof or denial that the money so received by the uncle was not applied by him towards the expenses of the joint family.—5 W. R. 105.

151. Arrears of revenue paid by a mortgagee in possession, in the *bonâ fide* belief that he had rightful interest in the property and would be entitled to recover the money so paid, may be recovered although the mortgagee should fail to prove the debt for which the property had been mortgaged.—5 W. R. 126.

152. Principle of calculating interest on the principal sum borrowed in the case of an usufructuary —.—5 W. R. 200. *See* 10 W. R. 301.

153. If a mortgagor in possession in trust for mortgagee causes the property to be sold for arrears of Government revenue and purchases it *benamee*, he is liable to be punished for criminal misappropriation under s. 405 Penal Code.—5 W. R. 230.

154. *Toujees, mehal melanee* papers, *jaidads*, and *jummawasil-bakee* papers are not *per se* the account to be produced by the mortgagee in possession within the meaning of s. 3 Reg. I of 1798, but may corroborate such account.—5 W. R. 271.

155. When a purchaser from a mortgagee sues a durmokurrureedar for the cancellation of his mokurruree lease granted without authority by the mortgagor, it is competent to the defendant to contest the *bonâ fide* character of the — although it was admitted by the mortgagor in a former suit brought by the mortgagee for possession.—5 W. R. 280.

156. A Judge has no discretion to extend the time allowed to a mortgagor under s. 8 Reg. XVII of 1806.—5 W. R., Mis., 31.

157. The payment into Court by an alleged mortgagor, under protest, of money claimed upon the —, which he disputes upon the ground that the — was false and fraudulent, with notice that he intends to sue to set it aside and to recover back the money, is not such a deposit, within the meaning of Reg. I of 1798 and XVII of 1806, as will save the equity of redemption.—(F. B.) 6 W. R. 225. *See* 25 W. R. 259.

157*a*. One out of two co-mortgagors or their representatives can redeem the entire estate where such estate is joint and undivided, by payment of the whole of the — money.—(F. B.) 6 W. R. 240, 7 W. R. 314. *But see* 276 *post*.

158. A mortgagee who once takes the — money, as deposited by the mortgagor within time, cannot afterwards sue for possession on the ground that the deposit was made after the expiry of the year of grace, and that he had applied for the money under wrong information from his agent.—6 W. R. 249.

159. Under an English deed, a mortgagee is entitled to possession, immediately upon default, subject to his own right to foreclose and mortgagor's right to redeem. The decree in the foreclosure suit would not be binding on a party who purchased any of the rights of the mortgagor before the pendency of a suit against him.—6 W. R. 269; 16 W. R., P. C., 33. *See* 22 W. R. 543.

160. In a suit to recover possession under a — deed, limitation will count as against the mortgagee from the date of default, and the pendency of a foreclosure suit will not prevent limitation from running.—*Ib.*

161. A mortgagor may give his usufructuary mortgagee the power to sue him personally, or to sell the land, or both, at any moment.—6 W. R. 283.

162. Since the repeal of the Usury laws, a mortgagor and mortgagee may make what contract they please with reference to the profits of the mortgaged estate, and the mortgagor may by contract deprive himself of the right to compel the mortgagee in possession to account for the profits.—*Ib.*

163. A purchaser under a decree obtained by a mortgagee under a simple —, is not subject to a conditional sale executed by the mortgagor after the decree had been obtained.—7 W. R. 67. *See* 10 W. R. 151.

164. Under Reg. XVII of 1806, a Zillah Judge should see it proved before him that the notice of foreclosure has been duly served, and record a proceeding certifying that the requirements of that Regulation have been duly carried out, and any elucidating facts necessary to be recorded.—7 W. R. 123.

165. Where the mortgagee is an execution-creditor, not on the — but on a simple money-decree on the consideration for the —, the proviso in s. 271 Act VIII does not apply; he can take the surplus, and his — lien will be reduced by so much.—7 W. R. 309. *See* 21 W. R. 87.

166. Mortgage-debts are indivisible except where there is a distinct notice on the face of the — deed of the separate shares of the mortgagors.—7 W. R. 314. *See* 14 W. R. 216.

167. A person under a conditional sale takes the property with all *bonâ fide* incumbrances created by the vendor previous to the sale.—7 W. R. 363.

168. Where a — is found to be genuine and the receipt of consideration admitted, the Court is bound to assume (unless the contrary be shown) that the transaction was a real one and that the consideration-money was paid.—7 W. R. 441.

169. If A has a — on two estates for a debt, and B has a — on one of them for another debt due from the same party, B has a right in equity to throw A in the first instance for satisfaction upon the security which he (B) cannot touch, where it will not prejudice A's rights or improperly control his remedies. A purchaser has the same equity.—7 W. R. 483.

170. An objector who wishes to save mortgaged property from sale, is bound to pay whatever the mortgagor is liable to pay under the decree.—7 W. R. 493.

171. R and G allowed their wives to appear as owners of a certain property; and the wives having mortgaged it to plaintiff, the husbands subsequently ratified what they had done and undertook the responsibility as securities for the — debt. *Held* that, as R and G could not succeed if they brought a suit to recover the property on the ground that the wives had no authority to pledge it, so neither could the defendant, who claimed under an attachment against them, attach the property, nor had the auction-purchaser any title as against the plaintiff.—8 W. R. 67.

172. Where the Supreme Court had issued execution after judgment had been entered on a bond, and had ordered a sale in 1821 under a *fi-fa*, of lands mortgaged in 1819,—*Held* that, at the time of the sheriff's sale (1821), an equity of redemption could not be sold under a *fi-fa*.—8 W. R. 210.

173. Where a mortgagor is prevented by the closing of the Court from depositing the — money on the day to which the time of payment is extended, he may prevent foreclosure by payment on the first day of the Court's re-opening.—8 W. R. 223.

174. Mortgagor having the option of depositing money in the Judge's Court or tendering it, is not bound to tender and prove that tender.—*Ib.*

175. Where a mortgagor has deposited the principal to redeem an estate, the usufruct of which had been enjoyed by mortgagee in lieu of interest, and the latter by setting up a false claim of absolute sale, forces plaintiffs into a suit, in which possession is decreed them, the plaintiffs

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are entitled to mesne profits within the Statute of Limitation, and to interest from date of suit.—8 W. R. 322.

176. Where a person suing as owner is admitted to be in possession as mortgagee, the question of possession ought to be tried.—8 W. R. 333.

177. Alienations made subsequently to the institution of legal proceedings by a mortgagee to enforce his — lien upon the property alienated, are void in law.—8 W. R. 362.

178. Where, in a suit to recover possession of mortgaged property, a large balance in favor of mortgagee is found to exist, plaintiff is not entitled to a conditional decree. —8 W. R. 369.

179. Alienation of mortgaged property, while foreclosure suit is still pending, does not stand between the mortgagor and his rights to redeem; where such property is sold at auction subject to the mortgagor's right to redeem, his equities follow the property even when the purchaser is only an agent.—8 W. R. 399.

180. An advance taken by a landlord does not make a lease a —.—8 W. R. 497.

181. A mortgagee cannot sue a Hindoo lady (widow of the original mortgagor) under s. 9 Act I of 1845, to obtain repayment from her personally of the money paid by him (mortgagee) to save the sale of the property for arrears of revenue.—8 W. R., P. C., 17. *See* 15 W. R. 329, 22 W. R. 411.

182. "Application" for foreclosure of —, as used in s. 7 Reg. XVII of 1806, means the whole transaction ending with the notification to the mortgagor; the year of grace for payment, and the year necessary to complete foreclosure, running from the date of notification, by which is meant the date of its issue by the Court or the date when the notification is handed to the peon for delivery.—9 W. R. 116. *See* 191 *post*.

As to commencement of year of grace.—*See* 192 *post*.

183. The purchaser of the rights of a mortgagor who obtained possession of the property, cannot be ousted summarily by a subsequent purchaser of a money-decree against the mortgagor.—9 W. R. 150.

184. The purchaser of a mortgagor's rights and interests in property already mortgaged and liable to sale, purchases merely the mortgagor's right of redemption.—9 W. R. 243.

And can only retain possession by buying off the previous —.—14 W. R. 233, 238; 17 W. R. 480; 21 W. R. 47; 25 W. R. 216.

185. A mortgagee in possession must keep regular accounts, or the presumption will be against him; but this does not mean that all the mortgagor's statements must be taken as true.—9 W. R. 275.

186. Where plaintiff contests a — on the allegation that an attachment subsisted, and yet pays into Court the amount due on mortgagee's lien, he has no cause of action as against the mortgagee.—9 W. R. 332.

187. A person claiming, as mortgagee, land attached in execution of a decree for rent, is not bound to bring his objection under s. 269 Act VIII; and his omission to do so does not bar his right to sue to establish the validity of his — within the period of limitation.—9 W. R. 474.

188. A mortgagee in possession of mortgaged premises is bound to keep them in necessary repair, and is entitled to charge for the same with interest.—9 W. R. 488.

189. Where a Hindoo widow raises money by mortgaging her husband's property, the mortgagee is not bound to look to the appropriation of the money so raised, his responsibility ceasing when he has satisfied himself that there was legal necessity for the loan.—9 W. R. 501.

190. A — subsequent to attachment, is such an alienation as is contemplated by s. 240 Act VIII, and is void as against the attaching creditor; *quære* as against others.—9 W. R. 544. *See also* 18 W. R. 279.

191. The year of grace allowed to a mortgagor by s. 8 Reg. XVII of 1806 includes holidays, no deduction of holidays being allowed after the expiry of the year.—9 W. R. 583.

192. It is to be reckoned from the date of the service upon the mortgagor of the notice to redeem, and not from the date of the issue of such notice.—(F. B.) 10 W. R. F. B. 27.

193. Where a person *bonâ fide* took a second — unaware of the first —, and in furtherance of his — obtained a decree and caused the right and interest of his debtor to be sold and purchased them himself,—*Held* that he committed no act to the injury of the first mortgagee for which the latter was entitled to sue unless his rights were disturbed, and that the plaint ought to have been rejected under s. 32 Act VIII.—10 W. R. 126. *See* 22 W. R. 389.

194. The purchaser of an equity of redemption is entitled to redeem and obtain possession of the land if the — debt has been liquidated before the plaint is signed, or upon paying into Court, within one month, the balance remaining due.—10 W. R. 167.

195. A decree of foreclosure in respect of property mortgaged by a benameedar by conditional sale is good and binding against the auction-purchasers of the rights and interests of the real owner, unless they can show fraud. If property is purchased in the name of a benameedar, and the *indicia* of ownership are in his hands, the true owner can only get rid of the effect of an alienation by showing that it was made without his acquiescence, and that the purchaser took with notice of the fact.—10 W. R. 185.

196. The purchaser of property at a sale in execution of a decree on a bond which mortgaged the property in question, has no preferential title over a prior purchaser under a decree which was only a money-decree and in which the liability of the property under the — was not declared.—10 W. R. 309. *But see* 25 W. R. 111.

197. Where, after notice of foreclosure and before expiry of year of grace, a mortgagee allows the mortgagor 6 months to redeem, and the mortgagor subsequently dies, it is necessary to issue a fresh notice of foreclosure.—10 W. R. 359.

198. In a suit based on a deed of conditional sale to recover property obtained by mortgagor in lieu of that contained in the deed,—*Held* that plaintiff had no lien on property he did not purchase.—10 W. R. 475.

199. A party suing for a share of mortgaged property on the ground of his interest in the — must show that the mortgagee had notice of such interest.—10 W. R. 476.

200. Where a party originally out of possession is put into possession by the act and permission of the mortgagor, he obtains a new title different from that possessed before.—10 W. R. 478.

201. Where a mortgagee, in a suit for foreclosure, sets up in his plaint and written statement that his mortgagors created their — in their character as executors under a will, he may, in the absence of *mala fides* and concealment, show during the trial of the cause, that the mortgagors created the — in some other character.—11 W. R., O. J., 21.

202. Where three persons (executors under a will) executed a —, and two of them were devisees under the same will, the — was a valid one and could not be resisted by a purchaser under a Sheriff's sale of the property mortgaged, who had only the right to redeem.—*Ib.* *See also* 21 W. R. 366.

203. A purchaser of the equity of redemption, who had obtained a decree against his vendor's mortgagee for possession in satisfaction of the debt, was held bound to such mortgagee alone, and not bound to see whether the mortgagee had made any subsequent transfer or other —.—11 W. R. 53.

204. Where the transaction on the face of a deed of — was an absolute sale, and an *ikrar* was executed at the same time as the — reserving the equity of redemption to the mortgagor, and it was admitted that the *ikrar* was in the possession of the mortgagee although it was alleged by the mortgagor that the *ikrar* had been lost and had somehow or other found its way into the hands of the mortgagee, —*Held* that the effect of the return of the *ikrar* to the mortgagee was to extinguish the equity of redemption without the necessity of executing a separate document requiring a separate stamp; also that the presumption of law was in favor of the mortgagee who had possession of the *ikrar* and that the *onus* of proving its loss was upon the mortgagor.—11 W. R. 151.

205. Where defendant advanced a sum of money upon a simple — and plaintiffs fraudulently concealed the fact that they had themselves made a prior advance on the same property, the effect was to make defendant first mortgagee, his purchase of the property at an execution sale, after notice of plaintiff's —, not affecting his rights as mortgagee.—11 W. R. 286.

206. The principle of the English law of — which enables a mortgagee to *tack on*, to the amount of his —, any further

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liability of the mortgagor to him, has never been recognized or adopted in the decisions of the Courts of India.—11 W. R. 310.

207. Plaintiff having executed a usufructuary — on a lease for 9 years, sued to redeem before the expiry of the lease. *Held* that the document leasing the property was partly "ticca" and partly "zur-i-peshgee," and that plaintiff could not enter into possession before the lease expired, and not even then if the transaction were viewed as zur-i-peshgee.—11 W. R. 408. *See also* 12 W. R. 527, 14 W. R. 455.

208. Words in a — deed merely intended to give further security to the mortgagee do not take away his right to issue notice of foreclosure and obtain possession by suit.—11 W. R. 544.

209. In a suit for redemption of an usufructuary —, interest was allowed to be calculated, under s. 10 Reg. XV of 1793, at the rate of 12 per cent., instead of 9 per cent., the rate expressed in the — deed.—(P. C.) 11 W. R., P. C., 19. *See* 16 W. R. 251.

210. A member of a joint Hindoo family governed by the Mitacshara law, has no authority to — his undivided share in a portion of the joint family property, in order to raise money on his own account and not for the benefit of the family.—(F. B.) 12 W. R. F. B. 1. *See* 12 W. R. 478; 14 W. R. 80, 339; 18 W. R. 48.

211. The purchaser of a property after the — has been foreclosed and a decree for possession obtained, is entitled to get the property free from a subsequent lease.—12 W. R. 19.

212. A mortgagor is not bound to give notice to his mortgagee of a transfer of his rights.—12 W. R. 105.

213. The Court cannot accede to the prayer of a defendant interested in one of three mortgaged properties claimed by plaintiff, who asks that plaintiff may be compelled to resort first to the two other properties for the satisfaction of his demand, but does not show that he is a *bonâ fide* subsequent mortgagee.—12 W. R. 114.

214. Where properties are joined together in one — bond, every portion of them is equally liable for a debt, the case being analogous to that of a suit for contribution between the several holders of a single lot.—12 W. R. 291.

215. Where a property was mortgaged to S who disposed of a portion to R, and both parties sued for possession after foreclosure,—*Held* that the foreclosure being duly carried out by "the receiver" of the deed of — is good as regards the whole property.—12 W. R. 353.

216. A mortgagee is not bound by a decision in a suit long after the date of his —, to which he is not a party; nor can he be deprived of his right to enforce his lien by a subsequent sale of the mortgagor's right, title, and interest.—12 W. R. 362.

Nor is he bound by an attachment not made known as required by s. 239 Act VIII.—12 W. R. 491.

217. In creating a — it is sufficient if it appears from the deed that it was the intention of the parties to create a charge upon the land. If the intention can be collected from the instrument, the form of expression is not material.—(F. B.) 13 W. R. F. B. 82. *See* 20 W. R. 12.

218. *Quære.* Whether a bond for payment of money, with a simple covenant not to alienate until payment, constitutes a —.—*Ib.*

219. Where the question was whether M B or H B was the mortgagee, it was held that, if the money advanced could be shown to have been the money of M B, it became immaterial to consider who was the nominal mortgagee; and that as plaintiff, who claimed through H B, sued on the allegation that the — was executed by M B *benamee* for H B and that H B had advanced the money, could not establish H B's title or show that the money was advanced by H B, his suit must be dismissed.—(P. C.) 13 W. R., P. C., 38.

220. Where mortgagees, instead of proceeding under s. 8 Reg. XVII of 1806, take possession before final foreclosure, mortgagors may redeem by payment of the advance made on the —, whether such payment be in cash or realized from the usufruct of the estate.—13 W. R. 44.

221. According to ss. 7 and 8 Reg. XVII of 1806, the year of grace, commencing as it does with the notification which follows on the mortgagee's application for foreclosure, is intended to be additional to the period stipulated for redemption in the — contract; and therefore the application itself cannot be made before the expiration of that "stipulated period."—13 W. R. 364.

The "stipulated period" being the period stipulated for the payment of the principal sum.—21 W. R. 274.

222. Plaintiffs were purchasers of the equity of redemption in a portion of certain mortgaged premises which were sold in lots, and sued the mortgagees who were also purchasers of the equity of redemption of several of the lots. They made the purchasers of the other lots parties to the suit, and sought to redeem their own portion of the estate and to recover possession of their own portion and the portion purchased by others than the mortgagees, on payment into Court of a sum sufficient to cover the proportion of the — debt attributable to the said parcels. The mode of applying the whole of the — debts between the different mouzahs of the mortgaged estate in such a case pointed out.—(P. C.) 14 W. R., P. C., 17. *See* 24 W. R. 47, 25 W. R. 388.

223. The principle that, when a creditor sues for his principal and interest (the latter being equal or more than equal to the principal at the time of the commencement of the suit), he is not debarred from charging subsequent interest for the period during which he is kept out of his money by his debtor's resistance of the demand, is not applicable to a case in which a mortgagee in possession is not a party suing for the money, but the party resisting by every means in his power a claim and redemption and the final settlement of the account.—(P. C.) *Ib.*

224. A party who, by paying off a — debt, becomes an usufructuary mortgagee in place of the original zur-i-peshgeedar, does not need to sue for the amount due, but is entitled to remain in possession until the whole debt has been discharged by the usufruct.—14 W. R. 29.

225. The right accruing to a lender of money under a — bond is to have his — lien on the land declared and the property sold in satisfaction; and if after sale the debt is not satisfied, to proceed against the debtor for the balance.—14 W. R. 214.

226. In a suit between Mahomedans by the heirs of a zur-i-peshgee mortgagee to recover the amount advanced, all the heirs of the mortgagee must be represented as plaintiffs or defendants, or those who sue must claim in proportion to what they are entitled under the Mahomedan law.—14 W. R. 216.

227. Under Regs. I of 1798 and XVII of 1806 taken together, a mortgagor preserves his right of redemption if he deposits in Court the whole amount due to the mortgagee within the time when the final foreclosure may be effected under s. 8 Reg. XVII.—14 W. R. 278.

228. In cases in which the mortgagee has held possession of the land and therefore has receipts and profits to account for, only the principal sum borrowed need be deposited as the "amount due," and the amount of interest left to be settled on an adjustment of the mortgagee's account.—*Ib.*

229. Notice of foreclosure may be served on mortgagor, when not at home, by affixing it on the door of his house.—14 W. R. 423.

230. A bond which hypothecates property for money advanced is a deed of simple —, not the less so because it does not provide any remedy for a breach of the conditions therein mentioned.—14 W. R. 461.

231. Where a decree under which mortgagors obtained possession of mortgaged property was reversed by the Privy Council, the mortgagees were held entitled to be replaced in possession and to get complete restitution and to be placed in the same position as they were in before the erroneous decree was made, even though the decree reversing the erroneous decree did not provide that the mortgagees should recover possession.—14 W. R. 465.

232. Where a mortgagee, obtaining a decree for a former —, paid it off and got a final decree for foreclosure, and then sued to set aside a putnee granted by the mortgagor between the dates of the two mortgages,—*Held* that, not having kept on foot the first — as a distinct and distinguishable security, the putnee lease was valid and binding on him.—14 W. R. 491.

233. It is open to a mortgagor in India to deny that the money, the receipt of which is formally acknowledged under his hand and seal, ever was advanced.—(P. C.) 15 W. R., P. C., 14.

234. In cases to which the Bengal Reg. XVII of 1806

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does not apply, the interest of a mortgagee under a deed of conditional sale becomes absolute according to the terms of contract by the mere failure of the mortgagor to redeem within the stipulated period.—(P. C.) 15 W. R., P. C., 35.

And the mortgagee has a right of re-entry immediately after default.—22 W. R. 90.

235. A party who obtains a decree enabling him to recover a — debt by sale of two mortgaged premises, is entitled in law to proceed against both or either of the properties as he thinks proper.—15 W. R. 170.

236. A mortgagor's right to redeem what he has mortgaged is indefeasible, and cannot be interfered with by unauthorized acts of the mortgagees, *e.g.* a *butwarra* entered into by the latter.—15 W. R. 353.

237. A decree for sale made by the Supreme Court in a suit for foreclosure of a — has no operation upon the title of a person in the Mofussil who was no party to the foreclosure suit.—(P. C.) 16 W. R., P. C., 19.

238. The title of a judgment-creditor or a purchaser under a judgment-decree cannot be put on the same footing as the title of a mortgagor or of a person claiming under a voluntary alienation from the mortgagor. The possession of such purchaser, if *bonâ fide* and without notice of the —, is the possession of an owner; and a suit by a mortgagee against the purchaser, founded on a title to enter into possession by reason of a default having occurred, ought to be brought within 12 years after the commencement of the purchaser's possession.—(P. C.) *Ib.* *See also* 22 W. R. 513.

239. Mortgagees of a share of an estate, having a valid lien on the estate to the extent of their share, are entitled to priority over any right under a putnee lease.—16 W. R. 54.

240. When a mortgagee sues to enforce his lien on property which has intermediately passed by sale into other hands, he is bound to sue not the mortgagor alone but the parties in possession also.—16 W. R. 98.

241. The property mortgaged by a registered bond is subject to a lien for the amount of the money secured by that instrument; and when such property is sold for arrears of revenue not accrued through default of the mortgagee, any proceeds which may arise from the sale, in excess of the arrears, belong to the mortgagee, and he has a right of action for their recovery.—16 W. R. 222.

242. When money is lent upon the security of immoveable property of a nature incapable of division, and the mortgagee, on one of the instalments becoming due, has to sell the property, he does not thereby lose all lien over the surplus proceeds.—16 W. R. 246.

243. In an usufructuary — where there is no stipulation for interest, the mortgagee is not entitled to it, the usufruct going in lieu of interest.—16 W. R. 251.

244. The effect of a stipulation as to repayment at a specified time is to entitle the mortgagee, if so minded, to foreclose at that time in the event of repayment not being then made.—*Ib.*

245. Where plaintiffs (appellants) claimed to be entitled to redeem property alleged to be held by respondents as mortgagees, and the latter claimed to hold it as an *enam* free from the payment of Government revenue, and were found to have held it under this title since 1824, the Privy Council refused to disturb their title thus fortified by long enjoyment without clear and unmistakable proof of the alleged —.—(P. C.) 17 W. R. 8.

246. Where defendant, in consideration of money advanced by S, entered into a — with plaintiff, who sued for possession after foreclosure,—*Held* that it did not lie in plaintiff's mouth to object to the suit being brought by S in plaintiff's name.—17 W. R. 92. *See* 22 W. R. 413.

247. Where it was contended that, according to an agreement, the mortgagee was entitled to the payment of the principal and interest on the debt, but that the payments of interest carried no interest themselves, the intention of the parties was construed to be that the interest might be set off against the rents and profits, and that the mortgagee was to account for any rents and profits and interest on the same which he might receive over and above the interest due to him upon the debt, s. 7 Reg. XV of 1793 not applying to transactions of this kind.—(P. C.) 17 W. R. 261.

The balance of interest is never added to the principal so as to produce compound interest.—22 W. R. 525.

248. Under an assignment executed by the mortgagor, it was arranged that the mortgagee should pay himself from the rents of a *ticca* lease at a certain rate annually until the realization of the — debt with interest. *Held* that, until something happened to disturb the arrangement, the mortgagee could not call for payment of the balance or realize it from the sale of the mortgaged property.—17 W. R. 263.

249. A *mokurrureedar* holding under a mortgagor has no right to redeem when the — comes to an end.—17 W. R. 271.

250. A mortgagor cannot ask for a decree for possession without tendering the whole of the — debt.—17 W. R. 342.

Where the sum tendered is insufficient, he has no right to a decree contingent upon his paying such sum as shall be found due.—17 W. R. 408.

251. A purchaser from a debtor was held entitled to recover the amount paid by him on account of previous mortgages, when in making those payments he merely acted for the debtor who had borrowed the money from him, and what he did was to see that money so borrowed was properly applied.—17 W. R. 480.

252. A — bond which covenanted that, until the debt was paid off, the mortgagor should not create any new incumbrance upon the property mortgaged, was held to prevail over a subsequent lease assigning the rents in liquidation of a debt.—17 W. R. 560.

253. In a former suit plaintiff, mortgagor under a usufructuary —, claimed recovery of the mortgaged property on the allegation of satisfaction of the principal by reason of the profits exceeding 12 per cent. interest, but having failed to prove that allegation, his suit was dismissed. He now sued for the recovery of the property under an *ikrarnamah* which did not stipulate for payment of interest. *Held* (1) that as no objection was taken at first on the score of plaintiff not having deposited the principal in Court, it must be considered to have been waived; (2) that the case put forward by plaintiff did not amount to an admission that there was an agreement to pay 12 per cent.; and (3) even if it did, as the *ikrarnamah* upon which plaintiff now sued did not stipulate for payment of interest, plaintiff was entitled to restoration of the property on payment of principal alone.—18 W. R. 62.

254. In a suit to recover land in the possession of the mortgagee under a usufructuary —, if, upon taking an account, it appears that the mortgagee has been fully satisfied, the mortgagor is not only entitled to have his property back, but the Court is bound as a Court of Equity to finally determine as far as possible all questions concerning the subject of the suit, the parties not being at liberty to re-open the — account in another suit.—18 W. R. 65. *See also* 22 W. R. 172, 269; 24 W. R. 275.

255. In such a case, the *onus* is on the mortgagor to prove that the principal has been paid, and on the mortgagee to show what is due to him as interest.—*Ib.*

256. Failure of the mortgagee in his duty, as trustee for the mortgagor, to keep accounts, and to produce proper accounts, is to be regarded as misconduct which ought to be taken into consideration upon the question of costs. —*Ib.*

257. Before obtaining possession under a decree obtained after foreclosure, a plaintiff is bound to pay off a prior lien subsisting at the time he obtained a conditional sale of the property.—18 W. R. 329.

258. A party with whose money a — has been satisfied may bring a suit for the enforcement of his lien as assignee of such —, but not for obtaining possession of the mortgaged property in the capacity of an absolute owner.—18 W. R. 404.

259. In a suit for possession by parties as mortgagors against two defendants, viz. (1) the representatives of the original mortgagees, and (2) certain parties alleged to have effected a fraudulent transfer of the property into another name,—*Held* that the suit being one for possession and being barred by limitation against defendants No 2, no decree could be given against defendants No. 1, who were not in possession.—19 W. R. 44.

260. The acquiescence of one mortgagor is not binding on another.—19 W. R. 170.

261. Transferees in possession are entitled to notice of foreclosure.—*Ib.*

262. Plaintiff's ancestor purchased a property sold in execution of a decree obtained in 1848 by B L against

MORTGAGE (*continued*).

R C and R L, and took possession. In 1861 K R sued R C's representatives on a — bond and obtained a decree against the defendants personally, which did not direct the sale of the mortgaged property. In 1868 K R in execution sold the right, title, and interest of her judgment-debtors to defendants who paid the consideration-money and obtained possession. Plaintiff now sues for ejectment. *Held* that defendants were entitled to stand in K R's shoes as an incumbrance so far as their money had gone to pay off K R's charge on the land; and that the suit must be taken to be a redemption suit and that plaintiff could not recover the property without paying defendants what was due to them.—19 W. R. 422.

263. An estate was mortgaged with the stipulation that the interest of the — debt should be deducted out of the usufruct, and that if the profits fell short the mortgagor would make up the deficiency. After a time the mortgagor tendered the amount of the principal sum and forcibly took possession of the property. The mortgagee sued to recover possession and obtained a decree with mesne profits. *Held* that plaintiff might have sued under s. 15 Act XIV of 1859; but that, suing as he did, the *onus* was on him to produce the accounts and show that something still remained due to him as interest.—19 W. R. 429.

264. Mortgagors cannot claim any benefit under an *ijara* lease until all the benefits which it pretends to secure to the mortgagee are realized by him.—20 W. R. 128.

265. A mortgagee failing to fulfil one of the two conditions prescribed by s. 8 Reg. XVII of 1806, *i.e.* furnishing the mortgagor or his legal representatives with a copy of his application to foreclose, cannot be said to be in a position to foreclose.—20 W. R. 363. 22 W. R. 90. *See* 45 *ante*.

266. Where the contract between a mortgagor and a mortgagee provides for the payment of the principal sum on a specified date and for the payment in the meantime of interest thereon, the mortgagor cannot have a partial redemption of the property under Reg. I of 1798, which was not intended (s. 5) to alter the terms of a contract settled between the parties except as regards illegal interest. Should the mortgagee consent to allow the principal sum, or part of it, to be paid off before the time fixed, he would be entitled, when agreeing to this, to make the payment of interest a condition of such redemption.—20 W. R. 387.

267. A redemption suit against the representatives of a mortgagee is not barred by limitation by reason of being brought beyond 12 years from the date on which the mortgaged property had been wrongfully sold away by the mortgagee.—21 W. R. 13.

268. In a redemption suit against the auction-purchaser from a mortgagee, it is necessary to determine whether defendant obtained the land under such circumstances that he is bound by the — bond.—*Ib.*

269. A man who has represented to an intending purchaser that he has not a — security in the property to be sold and induced him under that belief to buy, cannot as against that purchaser subsequently attempt to put his security in force.—21 W. R. 21.

270. An usufructuary mortgagee, who has no power of sale under his lease even for the purpose of realizing the money due to him from the mortgagor, cannot give a third party a power of sale over the property in respect to his own debt. The utmost he can do is to assign his rights and remedies against the mortgagor; but whatever the character or extent of those rights and remedies, they cannot be pursued in a suit to which the mortgagor is no party.—21 W. R. 185.

271. Where a mortgagee is deprived by diluvion of the possession of land over which he holds an usufructuary lease before he has repaid himself the amount advanced, he has a right, unless the terms of the lease are very special, to call upon the lessor for the unpaid balance of the loan.—21 W. R. 226.

272. Where the owner of an undivided share in a joint and undivided estate mortgages his undivided share, he cannot by so doing affect the interests of the other sharers; and the persons who take the security (*i.e.* the mortgagees) take it subject to the right of those sharers to enforce a partition, and thereby convert what is an undivided share of the whole into a defined portion held in severalty.—(P. C.) 21 W. R. 233.

273. Where such a partition is effected under Reg. XIX of 1814 before the mortgagees have completed their title by foreclosure and the consequential decree for possession, the mortgagees of the undivided share of one co-sharer, who has no priority of contract with the other co-sharers, would have no recourse against the lands allotted to such co-sharers, but must pursue the remedy against the lands allotted to the mortgagor, and, as against him, would have a charge on the whole of such lands.—(P. C.) *Ib.*

274. A payment of money into Court by an auction-purchaser with notice of a mortgagee's lien is not a payment into the mortgagee's hands, unless the mortgagee had the means of immediately taking the money out of Court, or did anything to show or to represent that he acquiesced in the payment into Court as a payment to himself.—21 W. R. 270.

275. A suit for the redemption of mortgaged property cannot go on to a due determination until all the mortgagors are made parties.—21 W. R. 428.

276. A tender by one or more of several mortgagors is not such as a mortgagee is bound to accept, unless it is made conjointly by the whole of the mortgagors or on their behalf and with their consent.—*Ib.* *See* 157*a* *ante*.

277. Where a — deed gives the mortgagee an option, in the event of a sale of the interests of the mortgagors, to throw up a lease held from them for the mortgaged jote and claim immediate payment from the surplus sale proceeds,—*Held* that, before the mortgagors can withdraw the surplus proceeds, they must give notice of their intention to the mortgagee.—22 W. R. 47.

278. Although it is irregular for a guardian to pledge the property of a minor without obtaining the sanction of the Court under s. 18 Act XL of 1858, the irregularity ought not to prevail when the — transaction was a proper one and there was subsequently a decree in a suit in which the minor was represented, under which decree the property was sold.—22 W. R. 77. *But see* 24 W. R. 46, 25 W. R. 449.

279. A mortgagee of a minor's property must show not only *bona fide* in the transaction, but also necessity for the alienation and mortgagor's authority to give a good title as the minor's agent.—22 W. R. 119.

280. The only person on whom effectual service of notice of — can be made is the person really interested in protecting the estate.—22 W. R. 168.

281. Where land has been for many years in continuous possession under a zur-i-peshgee lease, it cannot be mortgaged to a third party to the prejudice of the lessee's interests; such — can only be given subject to the zur-i-peshgeedar's right.—22 W. R. 196.

282. Where a mortgagee sues upon his — bond and his claim is decreed, the decree should be satisfied out of the mortgaged property, and not out of the right, title, and interest which remain in the mortgagor. The purchaser at the execution sale acquires all the interest which passed by the — to the mortgagee and any interest which remained in the mortgagor, *i.e.* his equity of redemption.—22 W. R. 360.

283. If there was a second —, all that it could pass from the mortgagor was his equity of redemption, and the decree in a suit on such — could only authorize the sale of the equity of redemption unless the first mortgagee was made a party and his — shown to be invalid and the second — to have priority.—*Ib.*

284. Where a *bonâ fide* purchaser from a Hindoo widow of an ancestral estate beyond her own life paid off a — upon the property which was existing at the time of the conveyance, and the reversioner reclaimed the estate after the death of the widow,—*Held* that the purchaser was entitled to credit for such payment.—(P. C.) 22 W. R. 409.

285. In a suit by a mortgagee for possession of the mortgaged property on the allegation that some of the defendants under subsequent mortgages and purchases had opposed him in obtaining possession, and to have it declared that the said mortgages and purchases were inoperative,—*Held* that the plaintiff had but one cause of action under his — deed, and was right in joining all the defendants in this suit.—22 W. R. 532.

286. By a — bond the mortgagor agreed to pay a specified rate of interest in instalments and to repay the

MORTGAGE (*continued*).

principal in 12 years (the mortgagee not being bound to accept payment earlier); and it was provided that, if any obstacles were caused by the mortgagor in respect of any of the conditions of the bond, the mortgagee would be competent, after two months' notice, to sell the property or portions thereof, and pay himself the principal and the interest thereon for the unexpired portion of the 12 years. A portion of the interest having come into arrear, the mortgagee gave notice of sale, but the mortgagor disputed his right to sell on the alleged ground as not being an obstruction within the bond; and the parties not being able to agree as to the conditions of sale, the mortgagee brought this suit claiming the full amount of the — money with interest for 12 years. *Held* that the clause relating to sale was in the nature of a penalty which could not be enforced only upon default in the payment of interest, and that the suit was not maintainable either as an action for damages for the amount which plaintiff could have obtained by the sale, or on the bond itself.—(P. C.) 23 W. R. 91.

287. Where in a suit for possession under an usufructuary — plaintiff obtained a decree giving him possession but requiring him to restore the property after satisfaction of his claim,—*Held* that he must certify the amounts received and outstanding, and that the Court executing the decree was bound to require from him, from time to time, a statement of the amount received, and to deal with the matter under s. 11 Act XXIII of 1861.—23 W. R. 156.

288. A party purchasing mortgaged property after a suit has been instituted to enforce the —, takes nothing as against the mortgagee, or as against one who claims under a decree which directs the sale of the property in satisfaction of the —, even though the bill of sale is registered and the — (which was for less than 100Rs.) was not registered. —23 W. R. 382.

289. No appeal lies from an order refusing an application by a mortgagor for the return of excess payment alleged to have been made by him in a proceeding under Reg. XV of 1798 by which he redeemed his —. -24 W. R. 17.

290. Persons succeeding to a mortgagor's interest are not entitled to redeem a part of the property on payment of part of the debt. Nor is a mortgagee, who has purchased a part of the mortgagor's rights and interests, entitled to throw the whole burden of the — debt on the remaining portion of the equity of redemption in the hands of a purchaser at a sale in execution of a decree against the mortgagor. Each buys subject to a proportionate share of the burden.—(Adopting 2 Agra H. C. Rep. 88) 24 W. R. 24. *See also* 25 W. R. 388.

291. Regarding issue of *chellan* on deposit of money to be applied in satisfaction of decree on — bond.—24 W. R. 415.

292. A mortgagee who does not take possession of the mortgaged property at the expiration of the period of grace, but elects to give the mortgagor time to pay his debt, cannot complain if the latter sells the property to other parties who are willing to pay off the — debt.—24 W. R. 429.

293. The only payments which purchasers of the equity of redemption can claim to deduct from the — debt, are sums actually received by the mortgagee in reduction thereof, not money owed by the mortgagee to the mortgagor on some other account.—24 W. R. 460.

294. An unregistered — deed which did not require to be registered was held valid as against a later registered conveyance.—24 W. R. 468.

295. A mortgagee who was deprived by the wrongful acts of the mortgagor of a portion of the land which constituted the only security for the — loan, was held entitled to recover from the mortgagor so much of the consideration money as was in proportion to the land of which he had been deprived.—25 W. R. 7.

296. Where money was lent on — without a stipulated rate of interest, and it was mutually agreed that the mortgagee was to retain possession for a given period precisely calculated, the stipulation was held to involve a condition that the property was not to be taken out of the hands of the mortgagee before that time.—25 W. R. 10.

297. A mortgagee cannot maintain a suit for *khas* possession of an undefined area of the mortgaged land without making his fellow mortgagees parties to the suit.—25 W. R. 39.

298. Where money is lent on a — deed on the condition that, if returned with interest within a given period, the property pledged shall revert to the mortgagor, and the mortgagee finds afterwards that the property in question is subject to a prior — of which he had no notice, he is at liberty to sue for the return of the money advanced with interest without waiting for the expiry of the stipulated period.—25 W. R. 51.

299. In a suit on a single — bond where part of the property concerned is conveyed, or alleged to be conveyed, to different persons, all these are entitled to notice and to be made parties, and such a suit is not multifarious.—25 W. R. 60.

300. In a suit for redemption, it is the peculiar province of the Lower Court to go into and adjust the accounts between the parties.—25 W. R. 74.

301. Where a mortgagor was liable for only a portion of the mortgaged property, but paid in the whole amount to secure himself against his co-sharers, he was held entitled to mesne profits for the whole.—25 W. R. 259.

302. A creditor taking a - - from an accredited agent cannot be expected to prove that no other person has an undisclosed interest in the hypothecated property.—25 W. R. 532.

303. Where the purchaser of certain property, which had been mortgaged to some one else, brought a suit for redemption and recovery of possession, alleging that the lien of the mortgagee had been satisfied by the usufruct, and the original owner intervened and got the suit thrown out on the ground of limitation because plaintiff had not taken possession within 3 years of the purchase,—*Held* that the Lower Court had acted wrongly in making the original owner a party to the suit and that the suit was not barred by limitation.—25 W. R. 535.

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Moveable Property.

1. Mat-huts of ryots are — within the meaning of s. 11 Act XLII of 1860.—S. C. C. 29. *But see* 10 W. R. 258 and 3, 4 *post*.

2. The Magistrate may direct restoration to the owner of — of which he has been wrongfully dispossessed, if it come into his hands.—W. R. Sp., Cr., 5 (2 R. J. P. J. 111).

3. Huts are not — within the meaning of s. 19 Act XI of 1865 and cannot be seized in execution. The words — in that section do not comprehend everything which a judgment-debtor has a right to remove, but means property which is capable of being moved in its existent state; and the words "personal property" in s. 6 seem to be used in the sense of —, for, as regards Hindoos and Mahomedans, there is no distinction between real and personal property, the distinction being between moveable and immoveable.—10 W. R. 416. *See* 15 W. R. 490.

4. Growing crops are not — within the meaning of s. 19 Act XI of 1865, though for the purposes of the Registration Act they are so dealt with under the latter Act, and cannot therefore be seized in execution.—13 W. R. 275. *See also* 17 W. R. 309.

Crops and trees are clearly not —.—24 W. R. 394.

5. A boat is —.—*See* Theft 13.

6. Huts are not — within the meaning of s. 19 Act XI of 1865.—(F. B.) 17 W. R. 309. *See also* 20 W. R. 8.

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1. By what authority fines are to be imposed under Act III of 1864 (B. C.).—3 W. R., Cr., 33.

2. Occupiers of land are liable for nuisances committed thereon by others.—3 W. R., Cr., 33, 57; 8 W. R., Cr., 45.

3. The owner of the land is not liable for the tax levied under s. 26 Act III of 1864 (B. C.) upon a house built upon his land by a lessee.—6 W. R., C. R., 30.

4. The length of notice for taking out fresh licenses to carry on slaughter-houses under Act VII of 1865 (B. C.) depends upon the circumstances of each case.—6 W. R., Cr., 77.

5. Under s. 87 Act III of 1864 (B. C.) a notice of action against — Commissioners is absolutely necessary for declaring a private road to be a public road. A notice objecting to and asking for a reconsideration of the order complained of is not sufficient.—7 W. R. 92.

6. The — Commissioners are entitled under s. 73 Act III of 1864 (B. C.) to recover the expense of clearing jungle on an occupant's land on his failure after notice to clear it himself within the specified time.—7 W. R. 213.

7. A Deputy Magistrate has no authority to order arrears of — tax due by a person to be paid out of a fine levied on him.—8 W. R., Cr., 17.

8. Under s. 87 Act III of 1864 (B. C.) — Commissioners are entitled to notice of action only where they acted in the *bonâ fide* belief that they were exercising powers given by that Act.—9 W. R. 279. *See* 9 W. R. 535, 13 W. R. 461.

9. An order of — Commissioners under s. 64 of same Act to take down a house or building was upheld, even where their written statements did not expressly state that they deemed the building to be in a ruinous state, and there was no allegation that they acted under that belief, it being assumed that both parties to the suit considered the defence to be that which such a statement and allegation would have made it.—*Ib.*

10. The mistake of a few rupees in a notice, caused by an error in addition, is not sufficient to impeach or affect a demand otherwise legally made under Act III of 1864 (B. C.).—9 W. R. 562.

11. A — Commissioner, invested with the powers of a Magistrate under s. 6 Act III of 1864 (B. C.), is protected by Act XVIII of 1850 in respect of every act done by him in such capacity judicially; and so long as he acts within his jurisdiction and in good faith, no action will lie against him in a Small Cause Court to recover by way of damages a fine levied under his orders.—13 W. R. 340. *But see* 24 W. R. 287.

12. A — Commissioner has no power, under s. 57 Act III of 1864 (B. C.) to impose a fine on a person for blocking up a drain which is not shown to be public property or along the side of any highway.—14 W. R., Cr., 23.

13. Whether the owner of a slaughter-house, by giving it in lease to another, is liable under s. 7 Act VII of 1865 (B. C.).—14 W. R., Cr., 67.

14. A conviction for a breach of s. 77 Act III of 1864 (B. C.) in not taking out a license for a wood-yard, was quashed because the Magistrate refused to try the question whether the wood-yard existed prior to 1864.—15 W. R., Cr., 84.

15. The High Court declined to interfere in a matter which was purely within the discretion of the — Commissioners (*e.g.* repairing and cleansing petitioner's tank) on the ground that the rates charged by them were higher than those which could be obtained by other persons.—16 W. R. 285.

16. A Magistrate or — Commissioner has no power or authority under Act III of 1864 (B. C.) to issue a warrant for the arrest of a person who has failed to appear on a summons to answer a charge under s. 77 of that Act.—16 W. R., Cr., 1.

17. Meaning of the words "uses any premises" in the same section.—16 W. R., Cr., 4.

18. Who is guilty of the offence of using a slaughter-house without license within the meaning of s. 1 Act VII of 1865 (B. C.).—*Ib.*

19. A previous sanction to the establishment of a slaughter-house does not entitle the proprietor to carry it on after it has become a public nuisance to the neighbourhood; nor can any prescriptive right be acquired to maintain, or any length of enjoyment legalize, a public nuisance involving actual danger to the health of the community.—16 W. R., Cr., 6.

20. Where the discretion of a — Commissioner in levying a fine under s. 67 Act III of 1864 (B. C.) was interfered with as not properly exercised.—16 W. R., Cr., 70.

21. By s. 19 of the Bye-laws of the Howrah Municipality framed under s. 84 Act III of 1864 (B. C.) and confirmed by the Lieutenant-Governor, it is within the discretion of the Municipality to refuse permission for the excavation of a tank, and the Courts have no power to interfere with the *bonâ fide* exercise of such discretion.—17 W. R. 215.

22. Every — Commissioner, being vested by s. 6 Act III of 1864 (B. C.) with the powers of a Magistrate under s. 23 Act XXV of 1861, is authorized to administer an oath.—19 W. R. 309.

23. A proceeding taken under s. 79 Act III of 1864 (B. C.) is not a judicial proceeding, and the "evidence" referred to therein means evidence without oath. Regular reports signed by medical men would constitute evidence within the meaning of that section.—*Ib.*

24. The same section does not authorize — Commissioners to interfere with a burning-ghât or burial-ground except when it is dangerous to the health of the neighbourhood.—*Ib.*

25. A — as well as any public Board is answerable to the restraining and regulating jurisdiction of the Civil Courts when it acts *ultra vires.*—*Ib.*

26. In a suit for the recovery of damages on account of a daily fine imposed by a — Commissioner acting as a Magistrate, and the seizure and detention of an omnibus (the fine having been set aside by the High Court and the detention pronounced illegal),—*Held* that the suit was barred by s. 87 Act III of 1864 (B. C.); that where a proceeding is illegal and may be a cause of action, it is not necessary to wait until the illegal proceeding is set aside; that the plaintiff's cause of action (if any) accrued upon the seizure of the omnibus, and not upon the order of the High Court which allowed the conviction to stand as to 1 rupee; and that the continued detention was not a fresh cause of action from day to day.—19 W. R. 339.

27. S. 77 Act III of 1864 (B. C.) refers to the burning of bricks for trading purposes, and not to cases where bricks are made for the particular use of the person burning them; such person need not take out a license for that purpose.—20 W. R., Cr., 65.

28. The High Court declined to interfere under s. 96

MUNICIPAL (*continued*).

Act X of 1872 with the order of a — Commissioner who was the editor of a newspaper and who had, prior to the disposal of the case, made very strong remarks on the case in his paper; holding that there was nothing illegal in his order, though he would have exercised a wise discretion if he had refused to sit as one of the Commissioners in the case.—21 W. R., Cr., 31.

29. A suit is not maintainable against a — Corporation for the value of goods sold and damages in consequence of attachment and sale of plaintiff's moveable property for the recovery of a fine under a prosecution under s. 67 Act III of 1864 (B. C.).—23 W. R. 222.

30. A — Commissioner, acting as a Magistrate, may enquire into a charge of the breach of a bye-law and punish the accused party by inflicting a fine; but the procedure to be followed is that of the Code of Criminal Procedure, which does not contemplate a proceeding against an absent party *ex-parte*.—24 W. R., Cr., 25.

31. S. 18 of the Bye-laws made by the Howrah Municipality in the exercise of the authority vested in it by s. 63 Act III of 1864 (B. C.), which forbids the erection or renewal of the external roof and walls of buildings with inflammable materials, was construed to forbid the renewal even of a portion of the roof with such material.—24 W. R., Cr., 70.

32. If, upon a notice being served on a party under s. 73 Act III of 1864 (B. C.), he does not choose to clear away the jungle referred to, it is open to the Magistrate as — Commissioner either to clear the jungle at the expense of the party in possession, or to proceed under s. 67 and inflict a fine.—24 W. R., Cr., 79.

See Fraudulent Removal or Concealment 1.
Interest 104.
Jurisdiction 468.
Municipal Courts.
Municipal Debentures.
Res Judicata 60.

Municipal Courts.

See Jurisdiction 444.

Municipal Debentures.

See Interest 104.

Murder.

1. A having remonstrated with B and C for driving their cattle into his crops, was attacked and beaten by them and in the course of the assault received a blow from a bamboo which fractured his skull and he died. The Assessors found B and C guilty of assaulting A and causing his death, and the Judge convicted them of voluntarily causing grievous hurt. The High Court considered that B and C might have been convicted of —; and that if circumstances existed which rendered a capital sentence unsuitable, it was within the discretion of the Judge to pass a sentence otherwise than of death.—1 R. J. P. J. 250.

2. In a case of — in which five persons were concerned, three were convicted on their own confessions, and the other two upon the evidence of one somewhat unsatisfactory eye-witness, whose evidence, however, was supported by the circumstantial evidence of the two prisoners having been at enmity with the deceased, and of their having been seen on the night of — in company with the prisoners who admitted the crime.—2 R. J. P. J. 33. *See also* 3 W. R., Cr., 11 (4 R. J. P. J. 570).

3. Where two persons killed the deceased in the act of having sexual intercourse with the wife of one of them,—*Held* that there was such grave provocation as to reduce their crime from — to culpable homicide.—1 W. R., Cr., 17; 5 W. R., Cr., 42; 6 W. R., Cr., 42.

4. The evidence of a single witness is sufficient for a conviction of —.—1 W. R., Cr., 48.

5. The absence of intention or premeditation will not reduce the crime from — to culpable homicide not amounting to —.—3 W. R., Cr., 40; 4 W. R., Cr., 33.

6. *Corpus delicti* not essential to a conviction for — when the accused confesses in the most circumstantial manner to having committed a —.—4 W. R., Cr., 19.

7. The offences of — and culpable homicide not amounting to —, each suppose intention or knowledge of likelihood of causing death. In the absence of such intention or knowledge, the offence committed may be grievous hurt.—4 W. R., Cr., 23.

8. Where two members of an unlawful assembly use spears and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of —.—4 W. R., Cr., 26.

Where four men beat another at intervals and so severely that death ensues, they must be presumed to have known that they were likely to cause death; and if they do all this when there was no grave or hidden provocation, or no sudden fight or quarrel, the offence committed is —.—4 W. R., Cr., 33.

9. In like manner knowledge of likelihood of causing death must be presumed when a man strikes another on his head with a stick when he is asleep and fractures his skull.—4 W. R., Cr., 35.

10. A charge under s. 302 Penal Code need not set out all the facts necessary to constitute the offence of —, and negative all the exceptions contained in s. 300.— 5 W. R., R. C., 1; *Ib.*, Cr., 2.

11. A Judge should clearly acquit a person of — when so charged, instead of merely finding him guilty of culpable homicide not amounting to —. When a Judge acquits a person of —, the High Court cannot, either as a Court of Appeal or as a Court of Revision, find that, according to the evidence, the prisoner caused death with the knowledge mentioned in cl. 4 s. 300 Penal Code; nor can the High Court, however wrong it may think the Judge to have been in acquitting of —, or however inadequate it may think the sentence to be, correct the error or enhance the sentence.—5 W. R., Cr., 2, 32. *See* 13 W. R., Cr., 55.

12. The punishment of death was not inflicted in a case where there was no intention to cause death, but merely a reckless assault with a deadly weapon which inflicted a bodily injury in the ordinary course of nature.—5 W. R., Cr., 20.

So also where a — was not premeditated.—21 W. R., Cr., 28.

13. Under the Penal Code, no constructive, but an actual, intention to cause death, is required to constitute —.—5 W. R., Cr., 42.

14. Distinction between — and culpable homicide not amounting to —.—(F. B.) 5 W. R., Cr., 45. *See* 5 W. R., Cr., 20, 78; 7 W. R., Cr., 27, 107; 8 W. R., Cr., 71; 12 W. R., Cr., 7, 68; 21 W. R., Cr., 39.

15. Powers of High Court as a Court of Revision in wrong convictions and acquittals in cases of —.—(F. B.) *Ib.* *See* 5 W. R., Cr., 41; 21 W. R., Cr., 39.

16. Where a person wilfully killed another whilst endeavouring to escape after having been detected in the act of house-breaking by night for the purpose of theft, the offence committed is — and cannot be considered to have been committed in the exercise of the right of private defence either of person or property, nor under grave and sudden provocation.—5 W. R., Cr., 73. *But see* 6 W. R., Cr., 50.

17. The sentence of death was reduced to transportation for life in a case of — committed rather by way of retaliation for an injury than under the influence of any worse passion.—6 W. R., Cr., 46.

18. In a case of — by consent, that evidence of consent which would be sufficient in a civil transaction, must be equally sufficient in exculpation of a prisoner's guilt.—6 W. R., Cr., 57.

19. Where a person through fear did not interfere to prevent the commission of a — but afterwards joined the murderers in concealing the body, he was held guilty, not of abetment of —, but of causing disappearance of evidence of a crime under s. 201 Penal Code.—6 W. R., Cr., 80.

20. The sentence of death was commuted into transportation for life in a case of — of a supposed wizard.—6 W. R., Cr., 82.

Murder (*continued*).

21. A conviction of — on a prisoner's own confession was affirmed.—6 W. R., Cr., 83.

22. Distinction between —, culpable homicide not amounting to —, and grievous hurt.—6 W. R., Cr., 86; 8 W. R., Cr., 28.

23. *Corpus delicti* not essential to a conviction for — where the man alleged to have been murdered was struck on the head in a boat with a heavy paddle and knocked overboard in a large river in the height of the waves, and has never been heard of since.—7 W. R., Cr., 14.

24. If a prisoner is charged with — and also with culpable homicide not amounting to — with reference to one and the same act of killing, and if he is convicted by the Sessions Judge of the latter, he is substantially acquitted of the former, and the High Court cannot upon appeal hold that the evidence was sufficient to warrant a conviction of — and alter the conviction accordingly, or reverse the finding and send the case back for a new trial.—(F. B.) 8 W. R., Cr., 47.

25. Where a quiet peaceable man, suddenly and without provocation, runs-a-muck against all around him, his case is different from an ordinary case of deliberate — deserving of the extreme penalty.—8 W. R., Cr., 53.

26. In cases of —, the dying declaration of the deceased should form part of the record.—9 W. R., Cr., 2.

27. To give an accused the benefit of Exception 1 s. 300 Penal Code, it ought to be shown distinctly not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause.—10 W. R., Cr., 26.

28. A Judge was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found.—11 W. R., Cr., 20.

29. Consent given under a misconception of fact, *e.g.* to being bitten by snakes at the instance of a charmer, will not protect the charmer from a conviction of —.—12 W. R., Cr., 7.

30. In a case of affray attended with —, in which the offence was committed before the Penal Code came into force, a Sessions Judge has power himself, under s. 4 Act XVII of 1862, to pass sentence of death, instead of referring the matter for confirmation to the High Court.—11 W. R., Cr., 76.

31. A Sessions Judge is bound to decide whether the offence committed is — or culpable homicide not amounting to —, even if the person who struck the fatal blow is not under trial.—23 W. R., Cr., 58.

32. The law does not require that a charge of — should be proved by the evidence of one or more eye-witnesses.—25 W. R., Cr., 36.

See Abetment 1, 4.
Assault 4.
Culpable Homicide (not amounting to Murder) 2, 8.
Dacoity 4.
Drunkenness 2.
False Evidence 16.
High Court 162.
Insanity 2, 6.
Master and Servant 9.
Practice (Criminal Trials) 82
Rioting 3.
Transportation 5, 7.
Unlawful Assembly 2, 7.

Mutation of Names.

1. Where a copy of a decree for possession is sent to a Collector in pursuance of cl. 2 s. 24 Reg. XLVIII of 1793, he must decide whether the — ought to take place. But where the Civil Court issues a precept, he must obey.—13 W. R. 141.

2. A Zillah Judge has no jurisdiction to make an order on a Collector as to how he is to enter the result of a Civil Court decree on his books with reference to a —.—13 W. R. 162.

See Declaratory Decree 20.
Evidence (Documentary) 128.
Gift 48.
Hindoo Widow 18, 98.
Onus Probandi 235.
Purdah Women 2.
Registration.
Vendor and Purchaser 75.

Muth.

See Endowment 50, 64, 65, 68.

Mutiny Act.

See Jurisdiction 277, 278, 310.
Practice (Execution of Decree) 177.

Mutual Dealings.

See Account 10.
Limitation 58.
,, (Act XIV of 1859) 6, 75, 146, 215, 265, 266, 270.
Onus Probandi 73.

Mutwalee.

See Endowment 12, 15, 19, 39, 42, 44, 48, 51, 58, 74.
Jurisdiction 464.
Kubooleut 38.
Pension 1.

Mysore.

The stipends allowed by Government to the members of the — family cannot be attached.—7 W. R. 169.

Naib.

Where misfeasance by a — now deceased was held to give a cause of action for a civil remedy.—2 W. R. 178.

See Account 4.
Ejectment 37.
Enhancement 21.
Gomashta.
Jungleboorce Tenure 3.
Jurisdiction 293, 347.
Land Dispute 38.
Lease 26, 67.
Mokurruree Tenure 16.
Pottah 2, 13.
Principal and Surety 8.
Remission 2.

Native Christian.

See Guardian 16.
Hindoo Converts.
Husband and Wife 18.
Jury 2.
Marriage 32.

Nattore Raj.

Succession to —.—W. R. F. B. 106, (*affirmed by P. C.*) 18 W. R. 221.

See Gift 1.
Hindoo Law (Adoption 2, 67.

Nawab Nazim.

See Moorshedabad 1.

Nazir.

1. The report of a — deputed to enquire into the condition of endowed property in dispute under s. 180 Act VIII of 1859, is not inadmissible because he is not an Ameen under Act XII of 1856.—W. R. Sp. 171.

A — is the head of an important department and must be responsible for the truth of what he reports or admits. He cannot be permitted to avoid responsibility by urging that his mohurrir deceived him.—7 W. R., Cr., 109.

3. Under s. 4 Act II of 1855, the Court can refer to entries made by its own — in his books and to find thereon. —8 W. R. 276.

4. Duties and responsibilities of the office of —.— 10 W. R. 264.

5. The report and map of a — who is not examined in a case are no evidence whatever.—16 W. R. 4. *See also* 18 W. R. 197.

6. Under Act V of 1863 (B. C.) a Collectorate — is not personally liable for loss consequent on property, which had been attached under a warrant directed to him, not being re-delivered on an order for its release, where such order has been duly entrusted by him for execution to a person on his establishment. —19 W. R. 335.

See Evidence 84.
Peons 1.
Plaint 89.
Practice (Attachment) 35.
Principal and Surety 29.
Sale 54.
Service 2.
Witness 10, 54.

Necessity.

See Ancestral Property 11, 12, 14.
Certificate 5.
Contribution 16.
Evidence (Estoppel) 12.
,, (Presumptions) 10.
Guardian 6, 19.
Hindoo Law (Alienation) 8, 10, 11, 12, 13, 18, 19, 20.
,, ,, (Coparcenary) 55.
,, ,, (Inheritance and Succession) 24.
,, ,, (Religious Ceremonies) 8, 9.
,, ,, (Sale) 3, 5, 7, 8, 10, 11, 12, 17.
,, Widow, 3, 8, 11, 12, 14, 23, 33, 35, 41, 42, 61, 62, 69, 70, 72, 99, 105, 107, 108, 109, 111, 113.
Lease 35.
Loan 2, 3, 6.
Mahomedan Law 32.
Manager 9.
Minor 24, 41.
Mortgage 34, 52, 189, 279.
Onus Probandi 43, 149, 164, 167.
Practice (Attachment) 8.
Receipt 2.
Recorders 6.
Reversioner 6, 12, 13.
Right of Way 20.
Sale 4, 16, 30, 47, 49, 56, 61, 76.
Vendor and Purchaser 25, 52.
Voluntary Payment 5, 7.
Zur-i-peshgee Lease 15.

Neem Howala.

See Ejectment 55.
Mesne Profits 86.
Notice 21.
Occupancy 80.

Neem Ousut.

See Enhancement 121.
Onus Probandi 117.

Neglect.

See Deed 10
Endowment 58.
Hindoo Widow 102.
Jurisdiction 441.
Laches.
Lease 84.
Pleader 84.
Police 8.
Practice (Possession) 86.
Principal and Surety 28.
Water-course 9.

Negligence.

1. Where the facts are equally consistent with the presence or absence of —, the plaintiff cannot recover; and the defendant is not bound to show that there was no —. —14 W. R., O. J., 45.

2. In an action to recover damages for injury caused to plaintiff's goods by defendant's — as a common carrier, it is not necessary for plaintiff to give evidence of such — unless the defendant has shown that the injury was occasioned by a cause which was within the exceptions expressed in the bill of landing, and then plaintiff would be at liberty to show that there was — so as to deprive defendant of the benefit of the exceptions.—(O. J.) 22 W. R. 39.

3. The maxim "*sic utere tuo alienum non lœdas*", was held not applicable to a case of injury done without — to plaintiff's railway and works by the bursting of two tanks upon defendant's land, the maintenance of which tanks was a statutory obligation imposed upon defendant as zemindar under a national system of irrigation recognized by law.—(P. C.) 22 W. R. 279.

See Abatement 19.
Animal 1.
Attorney and Client 1.
Carrier 6.
Evidence (Estoppel) 9.
Hoondee 4.
Jurisdiction 78.
Laches.
Minor 14.
Principal and Agent 55.
Railway 1, 2.

Nephew.

See Brother's Son.
Certificate 39, 75, 86.
Hindoo Law (Inheritance and Succession) 14, 16, 24, 57.
,, Widow 101.
Mortgage 150.
Sister's Son.
Will 48.

New Trial.

1. When new plaint necessary in — before a Small Cause Court.—S. C. C. 35.

NEW TRIAL (*continued*).

2. The suspicion that a party who has failed to prove his case may prove more successful on a second and further investigation, is no sufficient ground for directing a —.—P. C. R. 420.

3. Where the provisions of s. 379 Act XXV of 1861 were neglected and the Judge did not sum up the evidence at all, a — was ordered.—9 W. R., Cr., 51.

So also where the prisoner pleaded guilty without admitting all the ingredients of the charge.—25 W. R., Cr., 23.

4. Where the decision of a Lower Court implicitly followed a view of the law taken by the High Court, and that view was set aside by a ruling of the Privy Council, a — was ordered.—15 W. R. 143.

See Appeal 82.
High Court 84, 106.
Vakalutnamah 3.
Court Fees 3.
Jurisdiction 386, 481.
Evidence 71.
" (Documentary) 108.
Murder 24.
Remand 45.
Small Cause Court 22, 23, 24, 25, 29, 30, 34, 35, 41, 42, 46.
Practice (Execution of Decree) 99.

Non-Regulation Provinces.

See Appeal 176.
High Court 179.
Jurisdiction 416, 516.
Practice (Criminal Trials) 19, 33.

Non-suit.

1. Where the contract for the breach of which defendant was sued was executed at Akyab and the Chittagong Court gave a decree against defendant although he was a resident of Akyab, the High Court on appeal passed an order of —.—1 Hay 385.

2. Indistinctness of boundaries is not a ground for —.—1 Hay 555.

3. A suit brought when the appeal of the defendant, who had been unsuccessful in a former suit involving the same matter, was pending in the High Court where the position of the parties was reversed and a decree given in his favor, ought not to have been non-suited, but should have been allowed to proceed subject to the eventual decision of the appeal in the other case.—1 W. R. 365.

See Appeal 138.
Evidence (Estoppel) 33.
Jurisdiction 79.
Limitation 102, 131.
" (Act XIV of 1859) 27, 38, 43, 46, 69, 116, 124.
Putnee Talook 7.
Stamp Duty 2.
Withdrawal of Suit or Appeal 1.

Notes.

See Bought and Sold Notes.
Promissory Note.
Securities (Government).

Notice.

1. A suit for arrears of rent at a certain rate decreed in a former suit may be maintained without — under Reg. V of 1812, the decree itself being held to be sufficient —.—W. R. F. B. 93 (2 Hay 449, Marshall 396).

2. — not necessary in a suit for a kubooleut.—(F. B.) W. R. F. B. 183.

3. — necessary in a suit to assess rent after service of —.—2 Hay 376.

4. In a suit brought to fix the rent of land in the occupation of defendant, though the service of — was not proved, yet the plaintiff was adjudged entitled to the rent fixed from the date of suit, which was held to be a sufficient — of demand.—2 Hay 494.

5. Where a landlord served a — on an *ootbundee* ryot to pay enhanced rent or to quit the land, and the tenant gave — of his intention to quit, it was held that the tenant had sufficiently complied with s. 19 Act X of 1859.—W. R. Sp. (Act X) 9 (2 R. J. P. J. 69).

6. — not necessary under s. 13 Act X of 1859 where a demand is made for the rent of excess lands under a contract.—Sev. 138.

Or where there is an express contract for payment of rent at a certain rate from a certain date.—17 W. R. 258.

7. Issue of — on the parties, and not their pleaders, is not barred by s. 18 Act VIII of 1859.—W. R. Sp., Mis., 21.

But service of — of appeal on respondent's pleader is good.—15 W. R. 290.

8. A Deputy Collector may issue a — of enhancement under s. 13 Act X.—2 W. R. (Act X) 66 (4 R. J. P. J. 157).

9. Under s. 163 Act X, a Collector cannot issue a — of enhancement in respect of lands not situate within his jurisdiction.—2 W. R. (Act X) 71.

10. Summary suits demanding enhanced rent are sufficient — of enhancement under Reg. V of 1812.—2 W. R. (Act X) 73.

11. In a joint tenure — of enhancement need not be served on all persons interested under an unauthorized subdivision.—2 W. R. (Act X) 92.

12. Before a — on a respondent can be re-issued, an application must be made to the Court detailing the grounds on which it is preferred.—2 W. R., Mis., 37.

13. A — under s. 13 Act X is not requisite in a suit for declaration of title to set aside an alleged right to a quit-rent tenure.—3 W. R. (Act X) 4.

14. When a landlord receives rent from a wife as his tenant, and sues the husband for enhancement, the — on the husband is not sufficient.—4 W. R. (Act X) 2.

15. Mere service of — by an intermediate holder on his ryots is no proof that he realized rents at the rates therein specified.—6 W. R. (Act X) 41.

16. Distinct and independent holdings cannot be consolidated in a — of enhancement without the consent of the ryot, who is entitled to — or notices specifying the several holdings, the enhanced rent on each, and the ground of such enhancement.—8 W. R. 252; 20 W. R. 146, 404, 412.

But the — of enhancement need not be on a separate piece of paper for each holding.—20 W. R. 479.

17. A ryot is competent to object to the legality of a — of enhancement in a suit in which he is a plaintiff.—8 W. R. 271.

18. Notice to quit.—*See* Ejectment 66*a*, 89, 95*a*, 99, 101, 109; Enhancement 281, 291; Jurisdiction 419; Landlord and Tenant 15, 17; Lease 72, 74; Practice (Possession) 35, 90, 96; Relinquishment 24.

19. S. 42 Act V of 1861 does not declare that a suit against a Police Officer shall not be entertained without the — therein mentioned; and moreover the objection as to want of —, if not pleaded in the first instance, cannot be used as a ground of appeal.—8 W. R. 425.

20. What was held to be a sufficient — of enhancement of rent of an intermediate tenure.—12 W. R. 449.

21. What was held to be an insufficient — of enhancement of rent on a *neem-howaladar* or intermediate holder.—12 W. R. 506. *See also* 13 W. R. 163, 21 W. R. 441. *But see* 15 W. R. 520.

22. Whether land is held under an *ootbundee* tenure or not, the tenant is entitled to — under s. 13 Act X before the rate at which he pays rent can be enhanced.—14 W. R. 193.

23. A zemindar's — on an occupier to pay rent at current rates for certain land declared by decree to be invalid lakheraj, is simply a requisition to come to terms.—15 W. R. 272.

NOTICE (*continued*).

24. A — is not necessary under s. 19 Act X or s. 20 Act VIII of 1869 (B. C.) to entitle a ryot to give up the land at the termination of a short lease.—15 W. R. 454.

25. Where a decree gave plaintiffs the right to assess and receive rent for each year, a — under s. 13 Act X was held not necessary when the rent found assessable for the years for which it was claimed varied from what was found assessable in the year of the decree.—17 W. R. 452.

26. Informality in — of deposit under s. 31 Act VIII of 1869 (B. C.) was held fatal.—18 W. R. 126.

27. No — of enhancement is required in the case of a suit for arrears of rent at a rate fixed by arbitration.—18 W. R. 533.

28. A suit for enhancement of rent after a — specifying a distinct ground of enhancement ought to be tried on the merits, unless it appears that by law that ground cannot be maintained, or, that the case being one in which a special form of — is required, that — has not been given.—21 W. R. 411.

29. Want of — to quit was not allowed to be taken for the first time in special appeal.—25 W. R. 66.

See Abatement 24.
Ameen 23.
Appeal 54, 66.
Appellate Court 18.
Arbitration 54, 91.
Assignment 6.
Auction-Purchaser (Execution Sale) 2, 11, 15, 21*a*.
,, ,, (Revenue Sale) 17.
Benamee 26, 31.
Bill of Exchange 4, 7.
Breach of the Peace 1.
Churs 52.
Contract 21.
Damages 43, 44, 58.
Debtor and Creditor 3, 4.
Dismissal of Suit or Appeal 1*a*, 4.
Ejectment 69, 77.
Endowment 13.
Enhancement 1, 8, 10, 19, 21, 25, 30, 40, 45, 48, 51, 60, 62, 63, 70, 79, 80, 83, 89, 103, 111, 125, 139, 141, 146, 147, 152, 156, 158, 162, 163, 164, 174, 182, 187, 192, 193*a*, 201, 203, 214, 223, 224, 234, 238, 239, 242, 243, 244*a*, 245, 252, 253, 258, 259, 266, 269, 270, 274, 281, 283, 284, 286, 289, 291.
Ex-parte Judgment or Decree 16, 23.
Hidden Treasure 2.
High Court 168.
Hindoo Law (Coparcenary) 28.
,, Widow 101.
Hoondee 5, 8, 11, 16, 17, 18.
House-rent 2, 4.
Insanity 5.
Interest 18, 46, 84, 101, 104.
Irregularity 3.
Joinder of Parties 10.
Julkur 25.
Jurisdiction 185.
Jury 27.
Kubooleut 10, 28, 31, 50, 53, 57.
Land Dispute 38, 43.
Landlord and Tenant 15, 17, 49.
Lease 18, 27, 41, 62, 71.
Limitation (Act X of 1859) 24.
,, (Act XIV of 1859) 103, 182.
,, (Act IX of 1871) 7.
,, (Execution of Decree) 10,
See Lis Pendens 3.
Local Investigation 1.
Lunatic 4.
Measurement 1.
Minor 6, 39.
Mortgage 6, 12, 13, 17, 22, 29, 39, 45, 47, 68, 82, 83, 88*a*, 101, 123, 129, 140, 141, 144, 145, 182, 192, 193, 195, 197, 199, 208, 212, 229, 238, 261, 265, 274, 277, 280, 286, 298, 299.
Municipal 4, 5, 6, 8, 10.
Objection (under s. 348 Act VIII of 1859) 11.
Occupancy 9, 18.
Onus Probandi 144, 254.
Partition (Butwarra) 25.
Partnership 2, 23.
Payment 2.
Pottah 9.
Practice (Amendment) 11.
,, (Appeal) 67, 69, 91, 92.
,, (Attachment) 32.
,, (Commissions) 9.
,, (Execution of Decree) 20, 41, 75, 76, 77, 174, 209, 247, 262, 266.
,, (Review) 22, 52.
Pre-emption 5.
Principal and Agent 34.
Promissory Note 6.
Putnee Talook 27, 49, 59, 61, 81, 99, 100, 106, 108, 113.
Railway 3.
Refund 4.
Re-hearing 4, 8.
Relinquishment 3, 9, 11, 16.
Rent 48, 85, 111.
Resistance to Distraint 3.
Resumption 32.
Revival of Suit or Appeal 9.
Sale 18, 44, 59, 77, 85, 104, 105, 121, 130, 135, 140, 144, 155, 161, 171, 176, 196, 203, 216, 217, 230, 237, 240.
,, Law (Act XI of 1859) 11, 21, 24, 26, 28, 30.
Security 7, 8.
Service 6.
Small Cause Court 24, 29, 30.
Special Appeal 87, 102.
Survey 9.
Trust 11, 12.
Under Tenures 11, 12.
Value of Suit or Appeal 8.
Vendor and Purchaser 7*a*, 7*b*, 16, 29, 30, 36, 38, 44, 66, 69, 76.
Witness 64.

Notification.

See Notice.
Proclamation.

Nowabad.

1. A sub-lease of — lands, with a stipulation as to acknowledged pasturage lands being rent-free, allows of rent being demanded from pasturage lands not acknowledged at the time of sub-lease.—1 W. R. 259.

2. Where — lands once held by *turufdars* as a part of their *turufs* are resumed by Government and separately settled, such resumption and settlement do not affect the

NOWABAD (*continued*).

rights of ryots; and the purchaser of a — talook sold for arrears of rent can only ask for kubooleuts for the proportion of rents hitherto paid.—6 W. R. (Act X) 15.

See Evidence (Documentary) 72.
Sale 97.

Nudum Pactum.

See Husband and Wife 30.
Interest 34.
Vendor and Purchaser 32.

Nuisance.

1. No suit will lie in a Civil Court to set aside an order of a Magistrate made under Act XXI of 1841 for the removal of an unlawful obstruction from a public thoroughfare. The remedy, as given by s. 4, is by appeal from the Magistrate's order.—1 Hay 559 (Marshall 231). *See also* 2 Hay 86 (Marshall 214).

2. A person injured by the erection of an obstruction on a public highway, is not precluded from suing the person by whom it has been caused, by the circumstance that he had previously applied to the Magistrate for an order for its removal and that the Magistrate had refused to make any order.—2 Hay 659 (Marshall 537).

3. Whether a Magistrate can order removal and reconstruction of roof-drains under s. 73 Act XXV of 1861, which refers to public —.—2 W. R., Cr., 32 (4 R. J. P. J. 169).

4. The obstruction of a private path is not a — under s. 308 Act XXV of 1861.—2 W. R., Cr., 36 (4 R. J. P. J. 172).

5. Before issue of order by a Deputy Magistrate for the removal of a —, the opposite party should be called upon to show cause why the order should not be enforced.—*Ib. See also* 10 W. R., Cr., 27.

So as to an order under s. 521 Act X of 1872.—21 W. R., Cr., 86.

6. When a Magistrate declines to interfere with a complaint for the removal of a wall as affecting the public convenience under ss. 308 and 320 Act XXV of 1861, the High Court will not compel the Magistrate to proceed under s. 320 and enquire whether the land on which the wall was built was open to the use of the complainant's people.—5 W. R., Cr., 66.

7. The omission to keep one's ponies or buffaloes from straying is not a public — under s. 290 Penal Code.—6 W. R., Cr., 71; 9 W. R., Cr., 70.

8. A Magistrate who has commenced proceedings under s. 308 Act XXV of 1861, is not at liberty afterwards to proceed under s. 62, or otherwise than in conformity with Chap. XX.—8 W. R., Cr., 37. *But see* 12 W. R., Cr., 10. *See* (*as to the difference between the two sections*) 10 W. R., Cr., 53; 13 W. R., Cr., 72; 17 W. R., Cr., 57.

9. How a Magistrate should, under s. 308, order removal of a — caused by a tank.—10 W. R., Cr., 51.

10. Where persons served with notice, under s. 313 Act XXV of 1861, to remove a —, showed cause before the Magistrate, but did not ask him to take evidence or to summon a Jury, the High Court declined to interfere with the order passed by the Magistrate under s. 308 to remove the —, no illegality appearing in the order. The Magistrate should, however, in these cases record the grounds on which he acts and his reasons for rejecting the objections made to the removal of the —.—12 W. R., Cr., 24. *But see* 16 W. R. 63.

11. The Magistrate is bound under s. 310 to be guided by the decision of the jury.—12 W. R., Cr., 28.

And to fix a time for the submission of their award.—14 W. R., Cr., 69.

12. A Magistrate proceeding under Chap. XX Act XXV of 1861 should call upon the person causing an obstruction or — either to remove it or to show cause why it should not be removed within a reasonable time; and on his appearing to show cause, the Magistrate should proceed in a judicial manner, giving the party full opportunity to protect himself.—13 W. R. 13. *See* 15 W. R. 293, 16 W. R. 63.

13. A Magistrate cannot interfere under s. 308 Act XXV of 1861 in a case where the public are charged with committing a — by a private individual in the exercise of an admitted right.—14 W. R. 177.

14. An order in writing under s. 62 Act XXV of 1861 is necessary to sustain a charge under s. 188 Penal Code.—17 W. R., Cr., 57.

15. With reference to ss. 521 and 526 Act X of 1872, a Magistrate can only deal with existing and not future obstructions.—21 W. R., Cr., 10.

16. No order can be made under s. 528 Act X of 1872 unless there is imminent danger or fear of injury of a serious kind to the public; and where a Magistrate, who had made an order under s. 521, subsequently directed further enquiry to be made, it was held that he must be considered to have abandoned his proceedings under s. 528, and that he should have proceeded under s. 525, instead of fining the party charged under s. 188 Penal Code.—21 W. R., Cr., 86.

The liability to punishment under s. 188 Penal Code cannot attach to a person who comes in to show cause and submits to the judgment of the Magistrate.—26 W. R., Cr., 7.

17. A Magistrate's powers under s. 521 are confined to the instances specifically mentioned therein, and do not enable him generally to pass any order he may consider necessary for the protection of the public health.—22 W. R., Cr., 19.

18. It is only from a thoroughfare or public place that, under the above section, a Magistrate is at liberty to direct the removal of a —.—*Ib. See also* 25 W. R., Cr., 4, 72.

The petitioners, by agreeing to the appointment of a jury, cannot be taken to admit there was a *primâ facie* — so as to be bound by the verdict; nor would any mistake on the part of the petitioners give power to proceed under s. 521 if the act complained of did not come within the purview of that section.—25 W. R., Cr., 72.

19. An application to have it declared that a certain place could not be used for cremation purposes, would not come under s. 521 Act X of 1872.—24 W. R., Cr., 6.

20. Before a prohibitory order under s. 518 Act X of 1872 can be made, there ought to be information or evidence before the Magistrate that the act prohibited was likely to cause a riot or affray, and that the stoppage of that act would prevent such riot or affray.—21 W. R., Cr., 30.

21. S. 521 Act X of 1872 does not authorize the removal of a prostitute from her house simply on the ground of her profession, so long as she behaves herself orderly and quietly, and creates no open scandal by riotous living.—21 W. R., Cr., 68.

See Cattle Trespass.
Drain 1.
High Court 110, 124, 133.
Jurisdiction 21, 126, 160, 162, 247, 267, 331, 335, 402, 475.
Jury 22, 23, 25, 28.
Land Dispute 32.
Municipal 2, 19.
Obstruction.

Nukdee.

See Limitation 201.
Orchard 1.
Rent 66, 98 105, 112.

Oath or Affirmation.

1. Affidavit prescribed by s. 9 Act XVIII of 1863, how to be made and verified by persons unable to read and write.—9 W. R. 357.

2. When a party, who himself has the best knowledge of the disputed facts in a case, seeks the Court's assistance, he must give that knowledge on oath.—12 W. R. 422.

3. A witness may be examined either on —, but not on both at the same time.—13 W. R., Cr., 17.

4. S. 11 Act X of 1873 is not applicable to the evidence of a defendant who has been examined under the usual form of oath, and not under any — under s. 8.—22 W. R. 387.

5. Where the Court declined to act on the evidence of a

OATH OR AFFIRMATION (*continued*).

child 9 years old who had been examined without oath, although she was a competent witness under s. 118 Act I of 1872, s. 13 Act X of 1873 notwithstanding.—22 W. R., Cr., 1.

6. The evidence of a child of immature age (who, the Sessions Judge considered, understood the questions put to her, and who was therefore a competent witness under s. 118 Act I of 1872), which was taken by the Sessions Judge on a simple affirmation because she was not aware of the responsibility of an oath, was held to be admissible as evidence under s. 13 Act X of 1873.—22 W. R., Cr., 14.

7. The word "omission" in s. 13 Act X of 1873 is not limited to accidental or negligent omissions, but includes any omission—*e.g.* an omission to make affirmation, done deliberately and under the direction of the Judge.—(F. B.) 23 W. R., Cr., 12.

See Accused 9.
Detention 5.
Evidence 84, 93.
False Evidence 15.
Land Dispute 36.
Municipal 22, 23.

Objection (under s. 348 Act VIII of 1859).

1. Need not be written but may be verbal also.—2 Hay 79. *But see* 14 *post.*

2. Must raise points, on cross appeal, as against the appellant, and not points which solely concern the respondent and a co-respondent, as against such co-respondent.—2 Hay 180.

3. S. 348 does not apply as between two co-defendants or two respondents, but solely as between an appellant and a respondent.—2 Hay 505, 2 W. R. 227, 7 W. R. 39, 9 W. R. 78, 10 W. R. 326. *See also* 15 W. R. 26.

4. May be taken by plaintiff (respondent) against defendants who have not appealed, but who are *pro formâ* brought in as co-respondents.—W. R. Sp. 3.

5. S. 348 in no way restricts respondents as to the points on which they may object to the decision appealed against.—W. R. Sp. 231 (L. R. 14).

6. One defendant cannot take an — on the appeal of a co-defendant.—W. R. Sp. 294 (L. R. 78).

7. A respondent may take any —.—W. R. Sp. 299 (L. R. 81).

8. Unsuccessful intervenors (defendants) who have not appealed cannot take an —.—1 W. R. 311.

9. A defendant may take limitation as an —.—2 W. R. 45.

10. — cannot be taken by plaintiff (respondent) against a defendant who has not appealed and who is not before the Appellate Court.—5 W. R. 49.

Or in the absence of one of the parties interested in the decision of the first Court.—22 W. R. 314.

11. A respondent may, before the hearing of an appeal, file a written notice of the objections which he intends, under s. 348, to take at the hearing.—(F. B.) 6 W. R., Mis., 102.

12. An — cannot be taken against a co-respondent who is not present in Court.—7 W. R. 532.

13. The omission to appeal against an order of remand does not preclude a respondent on appeal from taking an — to the order of remand.—8 W. R. 208.

14. An application to file a cross appeal was rejected (1) because a written memorandum of its grounds had not been filed previously, (2) because the objection was not filed on stamped paper, and (3) because the ground now urged had not been urged in a regular appeal previously filed.—8 W. R. 379. *See also* 9 W. R. 375.

15. Where one defendant out of many appealed, in reality, in the plaintiff's interest, the plaintiff was not allowed to urge an —.—9 W. R. 273.

16. It is too late to take an — when the Appellate Court has given its decision.—9 W. R. 375.

17. Where, on the dismissal of a suit against two tenants and a co-sharer for joint rents, in which the tenants' dakhilas were declared to be false, the tenants appealed making plaintiff and his co-sharers respondents, and plaintiff made a —,—*Held* that plaintiff had no *locus standi* against his co-sharer on the appeal of the tenants.—11 W. R. 435.

18. An — may be urged at any time in the course of hearing an appeal.—15 W. R. 18.

19. A Judge is bound to dispose of an — made by the decree-holders on the appeal of some of the judgment-debtors, making the other judgment-debtors respondents if necessary.—21 W. R. 338.

20. An — cannot be taken when an appeal is dismissed for default.—23 W. R. 57.

See Appeal 15, 26.
Court Fees 9.
Damages 37.
Enhancement 6.
Limitation 122.
Practice (Appeal) 13, 44.
Special Appeal 5.
Stamp Duty 26, 29, 35.
Withdrawal of Suit or Appeal 8.

Obstruction.

1. The unauthorised repairing of a public road is not an — under s. 283 Penal Code.—7 W. R., Cr., 31.

2. Nature of — to be proved in order to bring a case under ss. 226 and 227 Act VIII.—8 W. R. 398. *See also* 12 W. R. 98.

3. S. 62 Act XXV of 1861 does not authorise a Magistrate summarily to direct the owner of a tank in a dry bed of a river to destroy the banks, on the ground that they are an — to the public in the lawful enjoyment of the river, and that the stopping of the water affects the health of the public.—10 W. R., Cr., 36.

4. Where a party encroaches on one side of a lane by building, and causes the traffic to pass over the land of the party on the opposite side, the latter's remedy is in the Criminal Court, his cause of action being — of a public thoroughfare.—11 W. R. 445. *See* 21 W. R. 408.

5. S. 62 Act XXV of 1861 does not authorise a Magistrate to order the removal of an — on the mere report of a Police Officer or on surmises and assumptions based on no evidence.—11 W. R., Cr., 46. *See* 13 W. R., Cr., 72.

6. No one has a right of suit in respect to — of a public road without showing that he has sustained some particular inconvenience or damage.—12 W. R. 160, 14 W. R. 173, 18 W. R. 58, 21 W. R. 145, 22 W. R. 462.

7. S. 62 Act XXV of 1861 does not authorise a Magistrate summarily to direct a person to remove a wall erected on land alleged to belong to another person, in the absence of evidence showing that a riot or affray was likely to occur.—13 W. R., Cr., 19.

See Auction-Purchaser (Execution Sale) 27.
Dismissal of Complaint 11.
High Court 110, 124.
Hindoo Law (Alienation) 21.
Husband and Wife 33.
Jurisdiction 330, 341, 344, 404, 452, 457, 468, 478, 504.
Jury 38.
Mesne Profits 89.
Nuisance 1, 2, 4, 12, 15.
Practice (Execution of Decree) 168, 215, 218, 238.
Resistance of Process.
Res Judicata 89.
Right of Way 21, 23, 31.
,, to Light and Air.

Occupancy.

1. The presumption of — from the Permanent Settlement, created by s. 4 Act X of 1859, is rebutted by the ryot relying on a pottah granted thereafter.—W. R. F. B. 22 (1 Hay 232, Marshall 68). *See also* 2 Hay 526 (Marshall 403); 2 W. R. (Act X) 30, 74; 5 W. R. (Act X) 31. *But see* 4 W. R. (Act X) 36.

2. To be entitled to the benefit of the above presump-

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tion, there must be a holding at a uniform rate for 20 years next before commencement of suit. — W. R. F. B. 31 (1 Hay 242, Marshall 107); 5 W. R. (Act X) 69.

3. The same presumption cannot create a right against an auction-purchaser under Act I of 1845.—W. R. F. B. 91 (2 Hay 460). *See contra* 5 W. R. (Act X) 16.

4. A ryot having a mere right of — has not such an interest in the land as gives him a right to a share of the rent, but has simply a right to occupy the land in preference to any other tenant so long as he pays a fair and equitable rent.—W. R. F. B. 131.

5. Ryots having rights of — are liable to enhancement under s. 17 (Act X).—W. R. F. B. 142, 1 W. R. 282.

6. Occupation as or cultivation by a trespasser cannot confer a right of — under Act X of 1859, nor be taken into account in considering whether a trespasser has occupied as a ryot for 12 years.—W. R. F. B. 146 (2 R. J. P. J. 113), 3 W. R. (Act X) 147, 8 W. R. 238, 18 W. R. 19.

7. Condition and rights of ryots. — W. R. F. B. 148 (2 R. J. P. J. 179, Sev. 136cc).

8. A ryot not having a right of —, cannot sue for abatement of rent under s. 18 Act X of 1859; nor is he entitled to a pottah under s. 8, unless there is an agreement with his landlord fixing the rate of rent.—2 Hay 430 (Marshall 325).

Nor is he entitled to abatement on the ground that similar lands in the vicinity rent for less than his.—25 W. R. 212.

9. Where notice of enhancement has been served, under s. 13, upon a ryot who has no right of — and whose rent has not been fixed by agreement with his landlord, such ryot cannot maintain a suit to set aside the notice of enhancement; his remedy, in case the rent is excessive, is under s. 14.—2 Hay 433 (Marshall 341).

10. A ryot not having a right of — cannot plead diluvion as a ground for diminution of rent.—*Ib.*

11. By s. 6 Act X of 1859 a ryot who has cultivated or held land for 12 years, has a right of —, whether the land be held under a pottah or not.—2 Hay 522.

And even though the tenant was originally a tenant at will.—15 W. R. 231.

12. By s. 18 any ryot having a right of — is entitled to claim abatement, if the area of his lands be diminished by diluvion.—2 Hay 522.

13. A tenant holding a term under a farming lease of land which he might sublet, is not a ryot, and therefore does not, by 12 years' occupation, acquire a right of — under s. 6.—Marshall 479.

14. A right of — cannot be acquired by occupation for 12 years under s. 6, where such occupation has been by virtue of a lease granting a term of years, and during the whole or part of such occupation the term had not expired.—*Ib.*

15. A ryot having rights of — can only have a decree passed against him for whatever rent is fair and equitable.—1 R. J. P. J. 103.

16. Only those tenants who cultivate their lands or sublet them to actual cultivators of the soil are entitled to rights of — under s. 6 Act X of 1859.—W. R. Sp. (Act X) 1 (2 R. J. P. J. 10). *See also* 12 W. R. 407.

17. S. 18 Act X of 1859 applies to the case of a party holding at a fixed rent, not under an express contract, but only by virtue of a right of —.—Sev. 95.

18. A person who has held land for more than 12 years, has, irrespective of s. 6 Act X of 1859, acquired a right of — under which he is entitled to hold possession as a tenant, though liable to pay enhanced rents to any extent that they may be, in due course of law, increased after service of notice.—Sev. 227.

19. A sub-lessee from a ryot having a right of — can gain no right of — for himself under s. 6 Act X of 1859. — W. R. Sp. (Act X) 72, 77. *See also* 6 W. R. 168, 7 W. R. 81, 9 W. R. 344, 10 W. R. 113, (F. B.) 22 W. R. 22.

20. A right of — under s. 6 Act X of 1859 cannot be acquired by holding under a farming lease which has expired.—W. R. Sp. (Act X) 77 (2 R. J. P. J. 353). *See* 17 W. R. 62, 552.

21. A right to hold at fixed rates does not necessarily follow a right of —.— W. R. Sp. (Act X) 92 (3 R. J. P. J. 12).

22. A ryot who does not allege possession or uniform payment since the Permanent Settlement, and whose witnesses prove the contrary, is not entitled to the benefit of the presumption laid down in s. 4 Act X of 1859.—1 W. R. 5, 2 W. R. (Act X) 69.

23. A right of — cannot be questioned in special appeal when not disputed in Court of first instance.—1 W. R. 56.

24. Uniform payment of rent for 20 years entitles a tenant to the benefit of the presumption created by s. 4 Act X of 1859.—1 W. R. 58, 5 W. R. (Act X) 31.

25. Persons not shown to have held possession in any other sense than as middlemen, cannot obtain any right of — under s. 6 Act X.—1 W. R. 68.

26. A right of — may be acquired by persons holding as simple ryots for 12 years before or after holding as farmers.—1 W. R. 76.

27. Tenant's right of —implied in a suit for enhancement.—1 W. R. 86 (3 R. J. P. J. 186).

28. A bare right of — is transferable, but the zemindar is not bound to register the transfer under s. 27 Act X.—*Ib. But see* 20 W. R. 478, (F. B.) 22 W. R. 22.

29. A defendant who pleads a mokurruree pottah which is found to be a forgery, is not entitled to the benefit of the presumption arising from 20 years' — under s. 16 Act X of 1859.—1 W. R. 106. *See* 34, 36 *post.*

30. *Neem howalas* are transferable, and purchasers from *neem howaladars* are consequently entitled to rights of —.—1 W. R. 125 (3 R. J. P. J. 191). *See* (F. B.) 22 W. R. 22.

31. A ryot has no right of — in respect of jotes held by him for less than 10 years, but is entitled to a pottah.—1 W. R. 241. *See also* 5 W. R. (Act X) 17, 11 W. R. 556. (*Over-ruled by F. B.*) *See* 83 *post.*

32. Payment of uniform rent must be clearly found to entitle a ryot to the benefit of the presumption under s. 4 Act X of 1859.—1 W. R. 243.

33. Failure to prove a mokurruree tenure in a former suit does not destroy the presumption arising from 20 years' —.—1 W. R. 264 (3 R. J. P. J. 328).

34. A ryot who has set up a false mokurruree cannot, on the failure of that allegation, be allowed to fall back upon a right of — under s. 6 Act X of 1859.—2 W. R. (Act X) 1 (4 R. J. P. J. 17), 12 W. R. 80. *See* 29 *ante, and* 36 *post. But see* 5 W. R. (Act X) 51, 10 W. R. 360.

35. The presumption of s. 4 Act X only applies to a case where existing circumstances are stated to have been continued from the Decennial Settlement and proof of such continuance for more than 20 years is given. Where it is alleged that, though a re-arrangement of jummas has taken place since the Decennial Settlement, yet the new terms are identical with the old, the proof of this should be enquired into.—2 W. R. (Act X) 2 (4 R. J. P. J. 17). *But see* 19 W. R. 95.

36. A defendant, setting up a mourosee pottah which is found to be fictitious, cannot fall back upon the presumption of s. 4 Act X.—2 W. R. (Act X) 6 (4 R. J. P. J. 21). *See also* 2 W. R. (Act X) 35.

37. The presumption of s. 4 Act X is not injured by a plea of holding "for a long time from olden date from before." -2 W. R. (Act X) 39 (4 R. J. P. J. 111), 4 W. R. (Act X) 43.

38. Nor by refusal of landlord to take rent for some years.—2 W. R. (Act X) 58 (4 R. J. P. J. 152).

39. Secret possession of land without payment of rent gives no right of —.—2 W. R. (Act X) 85 (4 R. J. P. J. 198).

40. A joint-owner under a mutual arrangement by all the co-sharers, who pays rent for his right of — is not a ryot in the sense contemplated in s. 4 Act X.—2 W. R. (Act X) 92 (4 R. J. P. J. 307), 4 W. R. (Act X) 48, 11 W. R. 206.

41. A lessee cannot claim to be considered a tenant by virtue of a right of — if he has never pleaded such a right.—3 W. R. 144.

42. S. 6 Act X is retrospective.—(F. B.) 3 W. R. (Act X) 29 (4 R. J. P. J. 465).

43. A right of — under s. 6 Act X is not affected by mere change of farmers.—3 W. R. (Act X) 125.

44. With reference to s. 7 Act X, no right of — under s. 6 accrues where the tenant came into possession under a contract only, or where a right of re-entry was reserved to the landlord.—4 W. R. (Act X) 1. *See* 11 W. R. 556, (F. B.) 22 W. R. 22. *But see* 83 *post.*

45. A right of — under s. 6 Act X is inherent under a *mourosee* lease in which possession for 20 years is found.—4 W. R. (Act X) 49.

46. Where the zemindar consents to the transfer of a tenure from one ryot to another, the possession of both must

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be considered continuous and the right of — to date from the time of the first holder.—5 W. R. (Act X) 55, 7 W. R. 395. *See* 15 W. R. 152, (F. B.) 22 W. R. 22.

47. The holder of a ryottee jote is protected by s. 6 Act X and has a clear right of — against the purchaser of a putnee talook 15 years after his purchase.—5 W. R. (Act X) 63.

48. A ryot who holds for more than 12 years under pottahs granted only for terms of years, has no right of —. —5 W. R. (Act X) 80, 11 W. R. 556. (*Over-ruled by F. B.*) *See* 83 *post*.

49. Continuous possession for 12 years gives a right of —. —6 W. R. 156.

Whether the land has been held under renewed leases or a continuous lease, is not material.—11 W. R. 88. *See* 83 *post*.

50. Ordinarily, a holding under a *bhugdaree* tenure (*i.e.* where the rent consists of a portion of the produce) would establish a right of — under s. 6 Act X. —6 W. R. (Act X) 17.

51. The specification of a term in a pottah is not evidence of itself that there was no right of —.—6 W. R. (Act X) 38. *See* 17 W. R. 62.

52. If a ryot has never claimed the benefit of s. 3 Act X and has only pleaded the facts required by s. 5, he is entitled to a pottah at fixed rates on his proving that he has held at the same rate for 20 years and so acquired a right of —.—6 W. R. (Act X) 77.

53. The question of a prescriptive right of — cannot arise in a case where a tenant sues to recover possession of land from which he alleges he has been illegally ejected.—7 W. R. 27.

54. A tenant having a right of — cannot sell his rights to another party who does not hold himself, and thus create an intermediate tenure between himself (the tenant) and his landlord.—7 W. R. 114. *See* 20 W. R. 139, (F. B.) 22 W. R. 22.

55. Where a tenant holding under a terminable lease which does not provide for re-entry, makes no allegation of previous possession, and there is no admission of it on the other side, the tenant is bound to go out at the expiration of his term; if he claims a right of —, he must prove it.—7 W. R. 283. *See* 11 W. R. 556. *But see* 83 *post*.

56. In a suit for ejectment the Civil Court is not precluded from determining the question of a right of — pleaded by defendant.—7 W. R. 395.

57. A holding for 12 years under one of several co-proprietors is sufficient to give a right of — under s. 6 Act X, provided the tenant has paid rent.—7 W. R. 493.

58. The gaining of a right of — under s. 6 Act X in a tenure not originally transferable, does not make the tenure transferable.—(F. B.) 7 W. R. 528. *See also* 11 W. R. 162, 105. 15 W. R. 152; 16 W. R. 111; (F. B.) 22 W. R. 22.

59. *Quære.* Whether a right of — gained under s. 6 is necessarily heritable.—*Ib. See also* 8 W. R. 60, (F. B.) 22 W. R. 22.

60. A holding by a ryot and his father for many years creates a right of — which will prevent the zemindar from ousting the ryot except by due course of law.—8 W. R. 127.

61. S. 6 Act X does not protect occupation, the main object of which is a dwelling-house (cultivation of the soil being subordinate), though it may *bastoo* lands in an ordinary cultivator's holding.—8 W. R. 250. *See* 10 W. R. 403, 12 W. R. 404.

So also under Act VIII of 1869 (B. C.).—24 W. R. 102.

But where the rent for *bastoo* lands was paid by the ryot to the landlord separately from the rent paid for the cultivated lands, but the tenure of the *bastoo* lands was ryotwaree, the distinction in the mode of paying the rent did not exclude those lands from the operation of Act X of 1859 or Act VIII of 1869 (B. C.).—22 W. R. 511.

62. A right of — under s. 6 is not affected by the ryot's pottah being declared void.—8 W. R. 374, 12 W. R. 80.

63. Where a tenant suing for a removal of his pottah proves a right of —, the Court should proceed to determine what rates of rent should be imposed, even should he fail to make good his claim to hold at fixed rates.—9 W. R. 81.

64. Possession obtained and continued by fraud, is not possession within the meaning of s. 6.—9 W. R. 449.

65. The benefits of s. 6 are not restricted to those who with their own hands till the soil, but apply to those who are actual cultivators in the sense of deriving their profits from the produce directly.—9 W. R. 579.

66. S. 6 does not apply to the case of a ryot not having a right of —.—10 W. R. 123.

67. Where the produce of land cultivated by plaintiff is taken away, he cannot recover value unless he has a right as against defendant to occupy the land, or is led by defendant to suppose so, or cultivates with defendant's knowledge.—10 W. R. 300.

68. The mere transfer of a right of — does not work as a forfeiture of the rights and interests of the occupant ryots.—11 W. R. 94. *See* (F. B.) 22 W. R. 22.

69. A right of — may be gained under s. 6 in land used for grazing purposes.—11 W. R. 231.

70. A tenant having a right of — can create a lease, and the lessee from him is entitled to hold the lands under the terms of the lease, the zemindar being entitled to nothing but the rent which the ryot who holds from him immediately has agreed to pay.—12 W. R. 110. *See* (F. B.) 22 W. R. 22.

71. Where a plaintiff seeks to recover possession of a *mourosee* jote by establishing his *kaemee* mokurraree title, the Court cannot decree to him a right of — under s. 6 Act X.—12 W. R. 203.

72. The fact of land being *nij-jote* (or *khamar*) does not *per se* prevent a cultivator from acquiring a right of — in it under s. 6 Act X.—12 W. R. 277.

So under s. 6 Act VIII of 1869.—23 W. R. 288.

73. Simple — and payment of rent under a grant for no specified period do not give a right of —.—12 W. R. 404.

74. A tenant who has a permanent right to occupy land subject to the payment of fair and equitable rent has a right to sub-let the land to the extent of his own interest therein.—12 W. R. 151. *See* 13 W. R. 291.

75. A plaintiff suing for possession of *debuttur* land and relying on a *mourosee* pottah given by a *pujaree* when in office, must prove a right of — under s. 6 Act X, and his title is bad if based on a grant from a person having only a limited interest in the land.—13 W. R. 241.

76. Mere possession for 12 years as a servant, without payment of rent, does not create a right of — under s. 6 Act X.—13 W. R. 322.

76*a*. A tenant's right of — is not avoided by the operation of s. 16 Act VIII of 1865 (B. C.).—13 W. R. 410, 22 W. R. 133.

77. A person who fails to prove a tenure which he claims, may prove a right of — in himself or others which would defeat a suit by the zemindar for the recovery of immediate possession.—14 W. R. 168. *See also* 17 W. R. 357.

78. Mere possession as tenants for a certain number of years cannot create any right to retain that possession against the will of the proprietors.—14 W. R. 410.

79. A yearly tenant of a jote cannot claim a right of — under s. 6 Act X, by adding the time during which his predecessor held it, even though the jote be transferable with the consent of the zemindar and such consent be proved, unless the original jote is proved to have been a perpetual jote.—15 W. R. 152. *See* (F. B.) 22 W. R. 22.

80. A zemindar occupying his own lands as *nij-jote* cannot, when the zemindaree passes into other hands, lay claim to them on the ground that he is a ryot with a right of —.—15 W. R. 430.

81. By holding for 12 years, a ryot does not acquire a right of —, if the land has been sublet to him for a term, or year by year, by a ryot having a right of—.—15 W. R. 469, 19 W. R. 95.

82. A *bhoolee* tenure may be a *goozashta* tenure; and a ryot who pays rent in kind and is in possession of or cultivates land for a period of 12 years, has a right of — so long as he pays the rent in kind.—15 W. R. 479.

83. A ryot who has held or cultivated a piece of land continuously for more than twelve years, but under several written leases or pottahs each for a specific term of years, is entitled, under ss. 6 and 7 Act X, to a right of —; the mere existence of the right of re-entry being insufficient, without express stipulation, to bring the case within s. 7. —(F. B.) 17 W. R. 62. *See also* 17 W. R. 552, 25 W. R. 158.

84. In order to establish a right of — under s. 6 Act X, a ryot is not entitled to add to his own possession the possession of his vendor, even with the consent of the zemindar to the transfer to him.—17 W. R. 179. *See* (F. B.) 22 W. R. 22.

85. A possession which amounts simply to a *mostagiree* right to collect rents from ryots is not such a possession as confers a right of —.—17 W. R. 242.

OCCUPANCY (*continued*).

86. Where a person held *ryottee* lands alternately as cultivator and farmer continuously for about 50 years,—*Held* that his cultivation for broken periods would not deprive him of his right of — under s. 6 Act X, and that the doctrine of merger did not apply to such cases.—17 W. R. 274. *See also* 25 W. R. 503.

87. A *ticcadar* occupying land merely as the assignee of the zemindar, and cultivating because of the opportunity thus afforded, cannot, under color of that character, claim the right of — under s. 6 Act X.—19 W. R. 177.

88. A right of — cannot be gained under Act X in respect of a tank used only for the preservation and rearing of fish, and not forming a part of any grant of land or an appurtenance to any land, even though possession may have been held for more than 12 years.—19 W. R. 200. *See* 21 W. R. 386.

89. The mere fact that the person to whom a ryot has for some years paid rent had no title, cannot take away from him the character of ryot, or prevent him from counting those years in the time necessary to give him a right of — under Act X.—19 W. R. 338.

90. The heir of a person with a restricted right of —, though not competent to transfer that right out-and-out by sale, may make during and for his life such arrangements as he thinks fit for the cultivation and management of the tenure.—20 W. R. 132.

91. Where *khamar* land is let by a zemindar for a term of years, and upon the expiration of that term tacitly let to the same tenant from year to year for a long period, the tenant does not thereby acquire a right of — under s. 6 Act X.—20 W. R. 308.

See as to s. 6 Act VIII of 1869 (B. C.).—23 W. R. 288.

92. A *nuksan* jote is very much the same as *outhundee*, and there is nothing in an *outhundee* tenure incompatible with the right of —.—20 W. R. 329.

93. A right of — is not acquired in a tank except where the tank is appurtenant to the land and there is a right of — in the land to which the tank is appurtenant: but not where the tank is the principal subject of the lease and only so much land passed with the land as was necessary for it, viz. for the banks.—20 W. R. 341.

94. Defendant's failure, in a suit for enhancement, to prove his plea that the land in question is *mourosee*, is no bar to his setting up a right of —.—20 W. R. 416.

95. In a suit to recover arrears of rent from a tenant having a right of —, where the only dispute is as to the rate of rent which the defendant is bound to pay, the rent which the defendant has previously paid should be presumed to be fair and equitable within the meaning of s. 5 Act VIII of 1869 (B. C.).—21 W. R. 108.

96. The words "cultivated or held" in s. 6 of the same Act have the effect of excluding lands occupied exclusively by buildings, from the right of — therein declared.—21 W. R. 400.

97. A right of — which a ryot has under s. 6 Act VIII of 1869 (B. C.) is not transferable; when such ryot sells his holding, his right of — ceases and it cannot protect the purchaser against ejectment.—(F. B.) 22 W. R. 22. *See also* 22 W. R. 169, 200, 493; 24 W. R. 6; 25 W. R. 104.

98. The continuous possession for 12 years, which is the subject of s. 6 Act VIII of 1869 (B. C.) must be a possession under one and the same right. This right may be in its inception joint with other persons, and, by the death of co-sharers, ultimately become a sole right without its continuous nature being affected.—22 W. R. 51.

99. Land held as one tenure is either subject to a right of — as a whole, or it is not subject to any right of — as to any part of it; if within 12 years the tenant has been allowed to take possession of fresh lands and such addition was intended to create a fresh tenure, a right of — has not been acquired as regards the whole, although a portion has been held for more than 12 years.—22 W. R. 228.

100. Under Act VIII of 1869 (B. C.), before a tenant can oust a landlord by insisting on remaining on his land, he must show a right of — in the land by a 12 years' possession.—23 W. R. 448.

101. In a suit by a zemindar for ejectment, when the ryot pleads continuous — for 12 years and it is found that the ryot was evicted during that period but got back into possession, the ryot's right of — would depend on whether the eviction was wrongful or not, the *onus* being on him to prove that the eviction was wrongful.—24 W. R. 324.

102. A party who has been in the — of land without paying any rent, is not entitled to the protection of s. 6 or s. 22 Act VIII of 1869 (B. C.).—25 W. R. 42.

103. Where a lease provided that, at the expiration of the term, the landlord should be at liberty to enter into a settlement with any one he pleased, and so put an end to the lessee's tenure, and the landlord notwithstanding allowed the tenant to continue the occupation paying rent,—*Held* that there was nothing in the stipulation which of itself operated to negative or destroy the tenant's right of —.—25 W. R. 111.

104. An "Indigo Concern" or "Firm" has no corporate or legal existence so far as the question of a right of — is concerned, which can only be recognized in particular individuals.—25 W. R. 117.

105. Every piece of land (cultivated or uncultivated) which the zemindar keeps under his own special control, would be *khamar* land within the meaning of s. 6 Act VIII of 1869 (B. C.); and long possession in respect of such land does not *per se* give a right of —.—25 W. R. 181.

106. The prohibitory clause of s. 6 Act VIII of 1869 (B. C.) will not apply to the case of a ryot holding under a person having a permanent transferable interest in the land, so as to deprive the ryot of a right of — in the land if he has fulfilled the other requirements of the law. The mere fact of his holding under a pottah which reserved only an annual rent year by year would not be sufficient to deprive him of the privilege, unless there were some words in the pottah prohibiting him from acquiring that right.—25 W. R. 213.

107. A *ticca* lease cannot confer a right of — on the lessee however long it lasts.—25 W. R. 554.

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OFFICIAL ASSIGNEE (*continued*).

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Onus Probandi.

1. In a suit for possession of land attached under s. 3 Act IV of 1840 the — is on plaintiff.—W. R. F. B. 7 (1 Hay 44).

2. In a suit for possession under the allegation that the property in dispute was under the management of the defendant, who denied management and set up a title by purchase and proved a possession for more than 30 years, the — was held to lie on plaintiff.—W. R. F. B. 8 (1 Hay 46).

3. In a suit for a kubooleut where the defendant admits partial tenancy.—W. R. F. B. 15 (1 Hay 228, Marshall 54).

4. In a suit for a share of certain property on the ground that it is joint, the — is on plaintiff.—W. R. F. B. 57 (1 Hay 433), 10 W. R. 198, 20 W. R. 65. *But see* 19 W. R. 178.

5. In a suit by a wife against her husband in which the defence is *bonâ fide* sale and payment of consideration-money, the — is on the defendant. The mere endorsement of Government securities (which, in the case of strangers or third parties, would throw the — on the person alleging fraud) did not apply when the relation was that of husband and wife.—W. R. F. B. 60 (1 Hay 399). *See also* 8 W. R., P. C., 3.

6. In a suit to resume a lakheraj tenure under s. 28 Act X of 1859.—(F. B.) W. R. F. B. 81 (2 Hay 276, Marshall 301).

8. In a suit for enhancement where lakheraj is pleaded.—(F. B.) W. R. F. B. 115; 6 W. R. (Act X) 21; 11 W. R. 35; 14 W. R. 285.

9. In a suit by a lakherajdar ejected by the zemindar under s. 10 Reg. XIX of 1793.—(F. B.) W. R. F. B. 174. *See also* 1 Hay 418. 2 W. R. 303, 8 W. R. 160.

10. As to the power of a naib to grant a mourosee pottah.—1 Hay 3.

11. In a suit relative to a disputed boundary of which defendant holds possession under an Act IV award.—1 Hay 7.

12. Where defendant admits execution and registration of a bond, the *onus* is on him to show the amount of consideration-money which actually passed between him and plaintiff.—1 Hay 57 (Marshall 27). *See* 23, 98 *post*.

13. Of rebutting presumption of property purchased in one brother's name in a joint Hindoo family being joint and not self-acquired and separate.—1 Hay 374 (Marshall 169).

14. Where a zemindar brought several paiks in Midnapore (holders of service lands) into Court and admitted that they cultivated their lands in several portions, the *onus* was held to be on him to prove that, notwithstanding this apparent separation of interests, a joint liability attached to the holding of the land as constituting a single tenure which could not be severed or alienated without his permission, and that such permission had never been conceded by him or his predecessors.—1 Hay 478.

15. Where a creditor sued for a declaration of the rights and interests of his judgment-debtors in a certain putnee talook, and of the liability of that putnee to sale for the satisfaction of the decree, the property ostensibly standing in the name of their *benameedar*, and the *benameedar* alleged that the judgment-debtors had no right and interest in the property but that the property belonged to him, it was held that, if the plaintiff succeeded in showing just ground for suspecting the good faith and validity of the title interposed between the creditor and the realization of his dues, the Court would require the ostensible owner to prove the reality of his ownership.—1 Hay 486.

16. Where it is sought to fix a person under the Mahomedan law with liability for the debt of a deceased person, by reason of the receipt of assets, it is incumbent on the creditor to give some evidence of assets having been received.—1 Hay 559 (Marshall 218).

17. The *onus* of proving that a tenure is lakheraj, is not affected by the circumstance that the person alleging that it is, bought the tenure as such at a sale in execution of a decree.—2 Hay 23 (Marshall 255). *See* 10 W. R. 278.

20. The *onus* is on the zemindar to prove that a dependent talookdar under s. 51 Reg. VIII of 1793 is liable to enhancement under that section.—2 Hay 220; 13 W. R., P. C., 11. *See also* (P. C.) 19 W. R. 353.

21. The *onus* of proving separation according to Hindoo law, is on the party setting it up.—2 Hay 353. *But see* Sev. 193.

22. In a suit by an auction-purchaser for the *khas* possession of land alleged to be *mâl* land fraudulently alienated by the former zemindar as lakheraj, the *onus* of proving that it is *mâl* land is on the plaintiff.—2 Hay 362.

23. When, in a suit for money under a bond, both the execution and the receipt of the consideration, are denied, the *onus* is on defendant to prove the latter plea if plaintiff establishes the execution of the bond.—2 Hay 381. *See* 12 *ante and* 98 *post*.

24. In a suit for assessment, the party setting up a lakheraj title must prove it.—2 Hay 387. *See also* Sev. 448.

25. In a suit for possession of a share of lands where the plaintiff and defendant were joint owners of land in the Collector's rent-roll, and defendant pleaded private partition and limitation, but wholly failed to prove the first plea, the *onus* of proving the second plea was held to be upon him.—2 Hay 470.

26. In a suit for possession of land, the defendant's setting up a plea of limitation does not constitute an admission of plaintiff's title so as to relieve him from the —.—2 Hay 648 (Marshall 549). *See also* 11 W. R. 283.

27. Where a defendant had indisputably held at a fixed rate for 20 years, the mere fact that plaintiff had been prevented for several years from suing him for enhancement was not held enough to relieve him from the *onus* of proving alteration of rent.—W. R. Sp. (Act X) 25 (2 R. J. P. J. 142).

29. Plaintiff, on coming of age, received from his mother, as his portion of his father's property, a certain share of his estate, and believing her statement that the remainder of the estate had been sold *bonâ fide* to pay off his father's debt, executed a release which he now sues to set aside on the ground that he has since learnt that the sale was fraudulent. *Held* that the *onus* was not on the plaintiff to prove that, at the time he executed the release, he did not know that the sale was fraudulent; but that the defendant was bound to prove the *bona fides* of the sale.—L. R. 106.

31. Where plaintiff sued for possession of land as heir of R, and defendant pleaded limitation, the *onus* was held to be on plaintiff of proving the death of R and its date.—Sev. 248.

32. There is no inflexible rule upon the point, and it must always depend much on the circumstances of each case, whether the — lies with the plaintiff or with the defendant.—Sev. 587.

33. In a suit where plaintiff sought to dispossess permanent leaseholders in actual possession under an Act IV award.—*Ib.*

34. When a man is put before the world as the owner of property (*e.g.* Government Paper) and has dealt with it as his property, then as respects all dealings with third parties the *onus* is on the plaintiff who claims the property to prove that it belonged to his ancestor.—Sev. 868.

35. It is not enough for a party trying to reverse a sale after the lapse of a long interval, to point out that the record *per se* does not contain the process of attachment. The *onus* is on him to show directly and clearly that no process of attachment did issue.—Sev. 894.

36. By Regs. XIX of 1793 and XIV of 1825 the — lies on the claimant to *lakheraj*, to establish his title to exemption.—(P. C.) Sev. 391.

37. In a suit for a kubooleut, where the ryot admits the plaintiff's title but disputes the rate of rent, and a third party intervenes under s. 77 Act X of 1859 and claims the right to receive the rent, the — is on the plaintiff as against the intervenor.—3 R. J. P. J. 84.

39. In a suit for enhancement under s. 17 Act X, if the defendant pleads that the productive powers of the land have been increased by his own exertions, the — is upon him.—1 W. R. 23 (3 R. J. P. J. 146).

Over-ruled by F. B., who held that the — is on plaintiff.—9 W. R. 190, 15 W. R. 109.

40. The — is upon a defendant who admits the rent but

ONUS PROBANDI (*continued*).

pleads payment.—1 W. R. 155, 264 (3 R. J. P. J. 155, 222); 17 W. R. 509; 24 W. R. 341. *See also* 3 R. J. P. J. 146.

So also in a suit by a putneedar where ryot admitted tenancy at a lower jumma but pleaded payment.—Sev. 478.

42. Where the ancestor of a joint Hindoo family purchased a property in the name of his youngest son, the *onus* was held to be on those who claimed under the youngest son to prove that the property was his separate possession.—W. R. Sp. 10.

43. In a suit by three brothers to recover an estate sold by their two elder brothers as their guardians during their minority, without any necessity and in collusion with the purchaser, the *onus* was held to be on the plaintiffs to prove that the sale was fraudulent and collusive.—W. R. Sp. 37.

44. In a suit between rival tenants of the same landlord, where one admits the other's tenancy but pleads resignation and a lease to himself, the *onus* of proving the resignation was held to be on the former.—W. R. Sp. 47.

45. A Hindoo wife, seeking to exempt property from responsibility for her husband's debts, must clearly prove that she had *streedhun*, and that she purchased the property with her self-acquired funds.—W. R. Sp. 60.

46. Where defendant pleads partly title and partly purchase, asserting his own possession on ancient titles, and denying that plaintiff's father or ancestor had been in possession very long, the *onus* of proving possession within the period of limitation is on plaintiff.—W. R. Sp. 107.

47. In the case of an ordinary joint undivided family, the presumption of Hindoo law would be that the whole property is joint estate, and the — would be on the party claiming any property as his separate estate to establish the fact. But where a plaintiff, though admitting that the family is undivided, contends that the family estate is a Raj, and has always been held by him separate and distinct from the others who are only entitled to maintenance, the undivided nature of the family alone on this contention can raise no presumption as to the joint nature of the estate so as to shift the — from plaintiff to defendant, a presumption inconsistent with the contention itself; but if, under such circumstances, the head of the family alleges that he has made purchases in the name of a single member, and that allegation is traversed, the *onus* will be on the party making the allegation to prove his case.—W. R. Sp. 111. *See* 7 W. R. 449; 10 W. R. 28, 393; 11 W. R. 436; 12 W. R. 7. *But see* 10 W. R. 122.

48. Where a share of an estate is purchased in execution, and purchaser's representatives absorb more land than belonged to that share and bring a suit to declare their rights, the — is on them.—W. R. Sp. 151.

49. In a suit for a moiety of money recovered in execution of a decree for the benefit of a joint estate, where the defendant alleged that the money was his separate property,—*Held* that the — was on the defendant and that the mere fact that plaintiffs had permitted defendant to draw out moneys in execution of a decree without objection on their part, would not raise the presumption that the money did not come from the common stock and shift the — upon plaintiffs. *Held* also that as plaintiffs permitted defendant to draw out this money without objection in 1262, and made no effectual demand till they sued in 1268, though a separation took place in 1256, they were entitled to interest only from date of suit, and not from the date when defendant drew out and appropriated the money.—W. R. Sp. 169.

50. Where a party claiming a right of pre-emption impugns the correctness of the price stated in the deed of sale, the *onus* is on him to show that the property had in fact been sold below the stated price.—W. R. Sp. 304, 18 W. R. 435.

51. In a suit to recover excess payment of Government revenue made on account of co-sharers to save the estate from sale, each holding a defined but not separated share, the *onus* is on plaintiffs to prove their shares and the amount of revenue payable on them.—W. R. Sp. 309 (L. R. 89).

52. A landlord is bound to point out, either by boundaries or some other definition, the lands which he wishes to assess.—W. R. Sp. (Act X) 124 (3 R. J. P. J. 116).

53. Where a ryot claims protection from ejectment by an auction-purchaser under the proviso to s. 37 Act XI of 1859, the *onus* is on the ryot to prove the character of his holding.—W. R. Sp. (Act X) 128.

54. The — is on the party seeking to except any property from the general rule of partition according to Hindoo law. (P. C.) 5 W. R., P. C., 67 (P. C. R. 1). *See also* (O. J.) 22 W. R. 248.

55. In a suit by purchaser at a sale for arrears of revenue for rents and profits of uncultivated land brought into cultivation, the *onus* was on plaintiff to prove that the land in question was included in the Permanent Settlement.—(P. C.) 5 W. R., P. C., 80 (P. C. R. 17).

56. The — is on an appellant who alleges that a *razeenama* was obtained from him by duress or fraud.—(P. C.) 5 W. R., P. C., 25 (P. C. R. 45).

57. The — is on a party alleging a Raj to be indivisible and claiming as heir to succeed to the whole.—(P. C.) 6 W. R., P. C., 1 (P. C. R. 98).

58. The — is on the party who seeks to show that the transaction should be governed by Hindoo law, that the *primâ facie* construction is contrary to the Hindoo law or the established custom of considering such contracts in Bengal.—(P. C.) 6 W. R., P. C., 48 (P. C. R. 152).

59. The — is on the party making an averment of improper consent to arbitration.—(P. C.) 4 W. R., P. C., 31 (P. C. R. 360).

60. In a suit by the purchaser of a certain annual payment by Government, called *Tora Garas Huk*, sold in execution of a decree, the *onus* was held to be on the Government to prove the inalienability of the payment.—(P. C.) 4 W. R., P. C., 55 (P. C. R. 387).

61. In a suit to disturb an admitted possession for about 11 years of a defendant who insists on a longer possession as a statutory bar to the suit, the *onus* is on plaintiff to prove that his cause of action accrued on a dispossession within 12 years before suit and that he or some person through whom he claims was in possession during that period.—(P. C.) 1 W. R., P. C., 51 (P. C. R 420); 2 W. R. 75; 7 W. R. 212; 8 W. R. 426; 14 W. R 51, 135; 15 W. R. 43; 19 W. R. 209, 282; 21 W. R. 79; 24 W. R 273, 315, 417.

62. Purchaser not bound to prove title to land years after it has accrued and possession has been enjoyed under it.—(P. C.) 5 W. R., P. C., 7 (P. C. R. 488; Marshall 592; Sev. 898).

63. The plaintiffs having to prove not only their relationship (which was not disputed), but their heirship (which depended upon the illegitimacy of the defendant), were bound to give sufficient general evidence in support of their case to throw upon the defendant the *onus* of proving his legitimacy.—(P. C.) 2 W. R., P. C., 13 (P. C. R. 519).

64. A person admitting that brothers have been joint in estate, and alleging a partition at a particular place and time, must take upon himself the burden of proving that partition.—(P. C.) 2 W. R., P. C., 31 (P. C. R. 520); 5 W. R. 214. *See also* 24 W. R. 365.

65. The — is on those who insist on the separation of lands from the general lands of a zemindaree and on their settlement as a shikmee talook.—(P. C.) 3 W. R., P. C., 5 (P. C. R. 563).

66. Where a person became the purchaser of a talook under a decree for sale obtained by judgment-creditors of the owner, and an assignee of a judgment-creditor sued to have it declared that the purchase did not effect any transfer of the ownership of the talook, the *onus* was held to be on the plaintiff to prove that the talook in question was still the property of the judgment-debtors and not the property of the purchaser.—(P. C.) 7 W. R., P. C., 10 (P. C. R. 651). *See* 9 W. R. 202, 23 W. R. 141.

68. In a suit for possession where defendant claims to have been in possession under a bill of sale of date long anterior, the plaintiff is bound to show his possession within 12 years prior to the suit.—1 W. R. 67. *See* 11 W. R. 276.

69. The *onus* of proving property (the subject of a gift by a Hindoo widow) to be *streedhun*, is on those who claim under her.—1 W. R. 107.

70. The — in a case of *benamee* sale after decree is on the plaintiff to prove that he is a *bonâ fide* purchaser for value, exercising due care and diligence.—1 W. R. 110. *See also* 11 W. R. 249, 19 W. R. 104.

71. A plaintiff is bound to prove that he attained his majority on the date alleged by him in his plaint.—1 W. R. 136.

72. In a dispute about a julkur when defendant is in possession under an Act IV award, the — is on the plaintiff. —1 W. R. 215.

ONUS PROBANDI (*continued*).

73. In a suit in which plaintiff claims arrears of rent upon an account in which he alleges having credited defendant with certain collections from the ryots, the — is on plaintiff.—1 W. R. 219.

75. When a defendant pleads limitation, the — is on the plaintiff.—1 W. R. 235 (3 R. J. P. J. 282); 5 W. R. 115; 7 W. R. 13; 9 W. R. 155; 21 W. R. 282.

76. Where legitimacy has been established by a summary enquiry, the — is on those who sue to set aside the orders passed on that summary enquiry.—1 W. R. 236.

77. Where sale has been made to defendant in possession of property of which a prior gift is alleged to have been made to plaintiff, the — is on plaintiff.—1 W. R. 244.

78. In a suit for enhanced rent of a talook which has existed as an ancient talook, and in which the only question is whether the rent is fixed or variable.—1 W. R. 280.

79. The *onus* of proving separation is on the party who admits that the property in dispute once belonged to a joint Hindoo family.—1 W. R. 316. *See* 3 W. R. 465.

80. If plaintiffs have purchased from a mortgagee after foreclosure, and the mortgagor and mortgagee both admit their title, the — is on the defendants who allege the transaction to be a fraudulent one.—1 W. R. 327.

81. Illegal ejectment from lakheraj land does not affect the — in an action for re-entry, but the — is still on the landlord.—4 R. J. P. J. 206, 4 W. R. (Act X) 1.

82. The — is on plaintiff suing to recover money voluntarily paid by her to defendant and alleged to have been obtained from her by fraud.—2 W. R. 2.

83. The — as to the nature of the tenure is on the zemindar suing for the value of trees cut down in an orchard in Behar.—2 W. R. 12.

84. In a suit for title-deeds where beneficial interest is pleaded in the property purchased in plaintiff's name.—2 W. R. 31.

85. In a suit by owner to obtain possession of land in the occupancy of another under an Act IV award, the — is on defendant.—2 W. R. 152.

86. The — is on plaintiff in possession suing for confirmation of title.—2 W. R. 167. *See also* 15 W. R. 286, 16 W. R. 27, 25 W. R. 6.

87. In a suit for resumption of invalid lakheraj, the *onus* is on plaintiff to show that the case falls within s. 10 Reg. XIX of 1793, *i.e.* that the grant was subsequent to 1st Dec. 1790.—(F. B.) 2 W. R. 205 (4 R. J. P. J. 191). *See also* 2 W. R. 258, 279, 302; 8 W. R. 451; 10 W. R. 278; 17 W. R. 449.

For previous rulings on this point. *See* W. R. F. B. 95 (2 Hay 613); 2 Hay 33; 2 Hay 90 (Marshall 215); L. R. 47; Sev. 171, 186; 3 R. J. P. J. 98; W. R. Sp. 8.

The *onus* on plaintiff is to prove a *primâ facie case, i.e.* that his land was once *mâl*; his *primâ facie* case once proved, the — is shifted on defendant, who must make out that his tenure existed before Dec. 1790.—(P. C.) 20 W. R. 459. *See also* 24 W. R. 417, 25 W. R. 209.

Plaintiff's — is not met by the mere fact of the land being within the ambit of his estate.—(P. C.) *Ib.* *See also* 20 W. R. 465.

88. In a suit for possession where defendant pleads a pottah from plaintiff's ancestors, which plaintiff traverses, the *onus* is on defendant to prove the pottah.—2 W. R. 208.

89. In a suit for possession of property mortgaged under a zur-i-peshgee lease, instituted by a purchaser of the rights of the heirs of A to whom the rights of the original owner are alleged to have been transferred several years ago by a sale in execution of a decree, the plaintiff is bound to prove that the mortgage still exists, and that he is entitled (as representative of A's heirs) to the equity of redemption and to possession on payment of what was due.—2 W. R. 267.

90. A plaintiff suing to eject those who have been long in possession, must prove a strict legal title.—*Ib.* *See also* 24 W. R. 336.

91. Where property left by a Hindoo widow is claimed adversely to the natural heirs and against the presumption that the widow had acquired the nucleus from her husband, the — is on those who so claim.—2 W. R. 326.

92. In a suit by the natural heirs where defendant pleads right by adoption, the — is on defendant.—*Ib.* *See* 4 W. R. 78, 11 W. R. 468.

93. In a suit for rent where a third party intervenes under s. 77 Act X of 1859, the — is on the intervenor.—2 W. R. (Act X) 36 (4 R. J. P. J. 115). *See also* 11 W. R. 319, 12 W. R. 62.

94. In a suit for rent (or enhancement) where defendant pleads that part of the land is waste and lakheraj, the *onus* is on the landlord to prove that such land has paid rent to him in previous years.—2 W. R. (Act X) 44 (4 R. J. P. J. 143). *See also* 6 W. R. (Act X) 18, 100; 7 W. R. 44.

95. Where an heir of a deceased judgment-debtor admits possession of some of the latter's property, the heir (and not the decree-holder) is bound to prove the extent of that property.—2 W. R., Mis., 41; 25 W. R. 224.

96. In a suit to resume governed by cl. 14 s 1 Act XIV of 1859, the — must not be imposed too harshly on the defendant.—3 W. R. 69, 182 (4 R. J. P. J. 407). *But see* 25 W. R. 209.

97. Where the widow of defendant's brother set up a stale claim to a half share of an alleged joint ancestral property, very moderate proof was considered sufficient from defendant.—3 W. R. 97.

98. Where defendant admits execution of a bond, but denies receipt of consideration, the *onus* of proving receipt is on plaintiff.—W. R. Sp. 63, 3 W. R. 111, 5 W. R. 203. *See* 12, 23 *ante*. *See contra* 10 W. R. 132, 407.

99. Where defendant admits having directed plaintiff to pay certain sums of money, the *onus* is on plaintiff to prove such payment.—*Ib.*

100. In a suit for assessment at enhanced rates, in which defendant admits that the main portion of the lands are *mâl*, but does not separate the rent-free lands, the plaintiff is not bound to prove that the lands are *mâl* until the defendant points out their precise situation.—3 W. R. 179. *See* 14 W. R. 285.

101. Where a plaintiff sues for land as *mâl* representing that defendant will set up an invalid lakheraj title and defendant does really plead a sunnud, the — is on plaintiff.—3 W. R. (Act X) 18. *See also* 9 W. R. 570.

102. In a suit for enhancement where defendant denies that the land in question belongs to plaintiff's estate, the — is on plaintiff.—4 W. R. (Act X) 18.

103. The *onus* of proving that a deed of compromise was beneficial to a minor, is on the party making the allegation in a transaction involving a surrender of the minor's title in a large estate for a very inadequate maintenance, and her waiver of the rights of appeal and cross-appeal as to portions of the property.—5 W. R. 4.

104. In a suit for redemption, the *onus* of proving that Reg. XVII of 1806 was promulgated in Sarun prior to the 28th Sept. 1806 was held to lie on plaintiff.—(F. B.) 5 W. R. 88.

105. In a suit to recover possession of land which plaintiff admittedly held as lakherajdar up to the time of dispossession by defendant, who pleads that the lakheraj was created subsequent to 1790 and that the land is part of his *mâl* land, the — is on defendant.—5 W. R. 91.

106. Where a lakherajdar sues for possession of land of which he has been dispossessed by the present putneedar, and which is situated in a village whereof plaintiff had been putneedar, the *onus* is on plaintiff to prove that the land was lakheraj during the period that he held the village in putnee.—5 W. R. 148.

107. In a suit by an alleged purchaser of original proprietor's equity of redemption to establish his right to redeem against a subsequent purchaser of the same proprietary rights, the plaintiff is bound to establish his original deed of purchase, and to prove either actual possession or receipt of *huq ajiri* or some portion of the proceeds of the property.—5 W. R. 163.

108. In a suit to recover Income Tax paid by a co-sharer whom the Lower Court found to be defendant's manager and held not to be entitled to sue for the Income Tax without rendering accounts, the mere fact of defendant having employed others to collect the rents of her share did not prove that plaintiff had ceased to hold possession thereof as manager or shift the —.—5 W. R. 168.

109. Whether plaintiff's superior tenure is admitted over the whole or only a part of defendant's under-tenure, and whether the existence, over a part of that under-tenure, of tenures independent of plaintiff's under-tenure is pleaded, the *onus* is on defendant to prove that he has collected rent direct from the ryot in possession.—5 W. R. 185.

110. Where a zemindar in possession has made out a

ONUS PROBANDI (*continued*).

primâ facie case, the *onus* is on the judgment-creditor, who attaches a tenure as liable for the debt and desires the same to be sold in execution, to prove the liability of the tenure to satisfy that decree.—5 W. R. 232.

111. In a suit by A for confirmation of possession and declaration of title, in which B intervened and claimed the property on the allegation of being in possession of it (which possession B did not show), and in which B's vendors were the principal defendants and admitted A's title and possession,—*Held* that B, as intervenor, could not question A's proved possession and title until at least B could show possession.—5 W. R. 233. *But see* 13 W. R. 362, 16 W. R. 235.

112. In a suit to recover possession, the — is on plaintiff.—1 W. R. 219; 5 W. R. 218, 245, 246; 8 W. R. 191; 11 W. R. 276; 14 W. R. 478; 17 W. R. 191; 20 W. R. 222.

113. In a case of separate messing by Hindoos living in the same enclosure and with no apparent separate incomes, though, as mere presumption of law, the estate may be assumed to be joint until it is shown to be separate, yet, as the law limits such claims to 12 years, any honest party must show whether he has had any enjoyment of the estate, either jointly or by division of profits, within that time.—5 W. R. 251.

114. In a suit for enhanced rent where plaintiff alleges that defendant abandoned a mokurruree tenure established by him and accepted a variable tenure, the — is on plaintiff.—5 W. R. (Act X) 32.

115. Where a landlord sues for enhanced rent and is met by the allegation that certain plots of land never paid any rent at all, he is bound to start his case and prove that the lands in question had at some time or other paid him rent. 5 W. R. (Act X) 37, 6 W. R. (Act X) 15.

116. Where a debtor pleads tender of payment as a ground for not being saddled with interest, the *onus* is on him to prove that he made such tender.—5 W. R. (Act X) 69.

117. Where plaintiff sues to set aside a *neem ousut* tenure on the ground of its non-transferable character, and defendant is in possession under a decision under cl. 6 s. 23 Act X, the — is on plaintiff.—5 W. R. (Act X) 72.

118. Where defendant pleads a *putnee* tenure, the — is upon him; but proof by him of the creation by plaintiff of an inferior tenure entitling him to hold the estate, shifts the — upon plaintiff.—6 W. R. 25.

119. The plaintiffs, on being served with notice of foreclosure of mortgage, brought a suit for a declaration that the mortgage was not genuine. *Held* that the *onus* did not lie on the plaintiff to prove the fabrication of the mortgage deed.—6 W. R. 69.

120. Where persons who have long held as *khadims* under superior holders, claim to hold permanently without liability to ejectment except for misconduct, the — is on them.—6 W. R. 89.

121. In a suit by a late Rajah's brother for maintenance, where it was pleaded that plaintiff's allowance must be diminished because he was no longer the ruling Rajah's brother, the — was held to be on defendant.—6 W. R. 91.

122. In a suit to eject an alleged lakherajdar as a trespasser, plaintiff is bound to prove his allegation, and that his cause of action accrued within 12 years of the institution of the suit.—6 W. R. 110.

123. Where a defendant does not specifically allege fraud otherwise than where, generally denying the truth of the plaintiff's allegations, he states the plaintiff's claim to be not true, the — is on the plaintiff.—6 W. R. 195.

124. In a suit for possession of alleged lakheraj land where lakherajdar proves possession as purchaser but zemindar contests his title, the — is on the latter.—6 W. R. 294.

125. An admission by one defendant against another who repudiates it, and which the Court finds to be collusive, cannot shift the — to the shoulders of the latter from off the plaintiff.—6 W. R. 299.

126. In a suit, not under s. 8, but under s. 17 Act X, plaintiff is bound to prove the rate he claims.—6 W. R. (Act X) 18.

127. In a suit for enhancement where defendant pleads a mokurruree pottah, the — is on him.—6 W. R. (Act X) 39, 10 W. R. 73, 107.

128. In a suit for enhancement where defendant pleads a custom whereby boundary lands are not liable to rent, the — is on him to prove the custom.—6 W. R. (Act X) 46.

129. In a suit for enhancement where defendant adduces in evidence a decree in a suit in 1820 between the predecessors of both parties to show that he and his ancestors had held at a rate fixed by a sunnud prior to the Permanent Settlement, the *onus* is on plaintiff to prove that the decree is not applicable to the disputed holding.—6 W. R. (Act X) 96.

130. The *onus* is on the party to whom a decree has been transferred, to prove his title to execute it if it be disputed.—6 W. R., Mis., 126.

131. In a suit for confirmation of possession and declaration of title, where defendant, who has a possessory award of the property under s. 15 Act XIV, pleads that plaintiff never was in possession, the *onus* is on plaintiff to prove possession within period of limitation.—7 W. R. 31, 230. *See also* 8 W. R. 84, 387; 17 W. R. 161. *But see* 11 W. R. 83, 16 W. R. 31.

132. After a general separation in food and a partition of estate, and after the brothers have commenced to live separately, if any one of them comes into Court alleging that a particular portion of property originally joint continues to remain so, the — lies on him.—7 W. R. 90.

133. Where a mookhtar sued his client, a Hindoo widow, upon a *perwannah* bearing her seal and purporting to give away valuable properties without substantial consideration, the — was held to be on plaintiff.—7 W. R. 98.

134. Where a mother sued for property which she said she had conveyed to her daughter in fraud of creditors, and which was attached in execution of a decree against the daughter, and alleged that the decree was fraudulently obtained, the — was held to be on plaintiff.—7 W. R. 118. *See also* 10 W. R. 321.

135. In a suit for confirmation of possession of lands sold in execution as lakheraj, the — is on plaintiff notwithstanding that defendant admits that the lands are within the boundaries of plaintiff's zemindaree.—7 W. R. 148.

136. The *onus* of proving title is on plaintiff seeking to oust a person formally declared by a decree under s. 77 Act X to be in the enjoyment of the rent of the disputed land and consequently in possession.—7 W. R. 149, 458.

137. In a suit to recover possession of land when plaintiff proves possession and illegal dispossession, the *onus* of proving the title is shifted upon the defendant in the first instance: and if the latter establishes his title, plaintiff must then be required to prove his.—7 W. R. 174; 8 W. R. 351; 9 W. R. 71; 12 W. R. 146, 161, 472; 20 W. R. 371, 421: 22 W. R. 417.

138. Where there is an allegation that a lease is held *benamee*, it is not sufficient for the party in whose name the lease is drawn to produce the document, but he must prove that he has the beneficial interest in the property.—7 W. R. 209.

139. Where a son purchased property sold for arrears of rent on account of his father's default, and both father and son were living together at the time of the purchase, the *onus* was held to be on the son to prove that his purchase was *bonâ fide*.—7 W. R. 275.

140. In a suit for restitution of timber wrongfully taken away and detained, if it is proved that property in plaintiff's possession was so dealt with by defendants, it would be for the latter to show that they were entitled to the property.—7 W. R. 286.

141. The *onus* of proving the extent of the title of plaintiff's vendor is on plaintiff.—7 W. R. 366.

Also of the *bonâ fide* nature of the transfer.—11 W. R. 454, 18 W. R. 151.

142. Where a plaintiff comes into Court to prove a lakheraj title, no proof of possession for years (unless it be carried beyond 1790) as apparent lakheraj can excuse him from proving his title.—7 W. R. 458.

143. The — is on a ryot who holds lands of considerable extent under a zemindar and alleges that one or two plots occupied by him are held under a different title.—7 W. R. 535.

144. In a suit brought by a ryot under s. 14 Act X to contest a notice of enhancement, the — is on the ryot.—8 W. R. 8. *See also* 11 W. R. 377.

145. Where there is *primâ facie* evidence that a tenant holds part of the land sought to be enhanced as paying rent and part as rent-free, the — is shifted from the

ONUS PROBANDI (*continued*).

tenant to the landlord.—8 W. R. 183, 9 W. R. 103. *See* 11 W. R. 35, 14 W. R. 285.

146. In a question of boundary between a lakheraj tenure and a zemindar's *mâl* land, there is no presumption in favor of one or the other, but the *onus* is on plaintiff to prove his case.—8 W. R. 209. *See also* 10 W. R. 413.

147. In a suit to contest distraint, when tenant pleads payment and landlord denies it, the — is on tenant. 8 W. R. 219.

148. The mere fact of the consideration-money for property sold by a member of a joint Hindoo family having passed out of his hands, does not relieve him of the *onus* of proving the source from which the money came, or to rebut the presumption of joint ownership.—8 W. R. 270. *See* 19 W. R. 178, 20 W. R. 65.

149. In a suit to set aside sales made by a minor's guardians on the ground that they were not justified by any recognized legal necessity, the *onus* is on the defendants to prove the necessity. Nature of proof sufficient to discharge such *onus* explained.—8 W. R. 364, 21 W. R. 287.

150. The *onus* of proving an allegation as to the lunacy of any person rests on the person who makes the allegation.—8 W. R. 375.

151. Where A, seeking to enforce a right of pre-emption, alleges that B's deed of purchase is ante-dated, the — is on A.—8 W. R. 383.

152. In a suit for arrears of rent at a specified rate or under a particular arrangement, the — is on plaintiff.—8 W. R. 464, 509.

153. In a suit by a Mahomedan wife for recovery of her property which has passed to a *bonâ fide* purchaser under conveyances executed by her to her husband or such purchaser, the — is on her.—8 W. R., P. C., 3.

154. In a suit by a Mahomedan widow against the brother of her deceased husband for her share of the husband's property, when defendant sets up a *tumleek-namah* by which the deceased conveyed away the property to defendant's son, the — was held to be on defendant.—9 W. R. 142.

155. In deciding the plea of limitation, it is for the plaintiff to prove that he has been in possession within 12 years of date of suit, and not for the defendant to prove adverse possession for 12 years.—9 W. R. 155, 24 W. R. 315.

156. Where the purchaser of the rights of a mortgagor sold in execution is ousted after foreclosure, and urges in appeal that the mortgagor had no power to alienate the property as it was under attachment for debts prior to date of mortgage, he must show that the attachment was made by himself or in execution of the decree under which he purchased.—9 W. R. 167.

157. The general rule of evidence is that if, in order to make out a title, it is necessary to prove a negative, the party who avers a title must prove it.—(F. B.) 9 W. R. 190. *See* 13 W. R. 91.

158. In a suit for rent the — is on defendant who alleges a remission of rent.—9 W. R. 239.

159. Where a person, after attaining majority, questions any sale of his property by his guardian during his minority, the *onus* is on the person who upholds the purchase, not only to show that, under the circumstances of the case, either the guardian had the power to sell or that the purchaser reasonably supposed he had such power, but also that the whole transaction, so far as regarded the purchaser, was *bonâ fide*.—9 W. R. 297.

160. Where plaintiff claims, not under any general right of inheritance, but expressly under a deed, the *onus* is on him to prove that deed, and no legal presumption as to the contents of the deed can arise from a consideration of what the party through whom he claims would have been entitled to by the law of inheritance had there been no such deed.—9 W. R. 385.

161. In a suit to establish a right of pre-emption on the ground of ownership of contiguous land, no amount of mis-statements on the part of defendant as to the ownership of such land can relieve plaintiff of the *onus* of proving his ownership.—9 W. R. 455.

162. In a suit to recover a share of a tank on the allegation of its being joint family property, the mere fact of plaintiff's having at some previous time been in possession can be no proof of his title or shift the — on defendant.—9 W. R. 461.

163. A plaintiff suing for a declaration that an adoption is invalid, is bound to prove the invalidity.—9 W. R. 463. *See also* 21 W. R. 84, 24 W. R. 107.

164. Where a father is not entitled to raise money by sale of an ancestral estate, and the son is entitled to set aside that sale, the *onus* lies on the person who contends that the son is bound to refund the purchase-money before he can recover the estate, to show that the son had the benefit of his share of the purchase-money or acquiesced in the sale.—(F. B.) 9 W. R. 511.

165. In a suit to recover possession of land under a mokurruree lease, in which the zemindar (defendant) admits the lease, but the other defendant also claims a mokurruree interest, the — is on the latter defendant.—10 W. R. 9.

166. In a suit to recover possession of property from plaintiff's vendor, where a third party claims and is made defendant, the — is on the intervenor.—10 W. R. 52; 16 W. R. 19. *But see* 13 W. R. 168, 362; 15 W. R. 97; 16 W. R. 235.

167. Where a reversionary heir sues to recover property on the allegation that it has been improperly alienated, the *onus* is on the alienee to show that there was actual necessity for the alienation or that he was reasonably led to suppose that such necessity existed.—10 W. R. 94.

168. Where the reversionary heir of a former proprietor sues for land in the possession of a third party who obtained it by purchase at a sale in execution of a decree on a bond, both bond and decree being alleged to be fraudulent, the *onus* is on plaintiff to prove that the decree was fraudulently obtained.—10 W. R. 173. *See* 14 W. R. 275.

169. In a suit for a declaration that certain bonds are *lakheraj* on the ground that defendant obtained a decree in the Collector's Court against plaintiff for rent, the *onus* is on plaintiff to prove that he held the bond as true lakheraj and that the Collector's decree was wrong.—10 W. R. 188.

170. In a suit for a share of certain joint property claimed under a family arrangement reduced to writing as an ikrarnamah, the — is on plaintiff.—10 W. R. 194.

171. In a suit for enhancement of rent where defendant pleads that a parcel of the land is *debuttur* belonging to another party, the *onus* is on plaintiff to prove that the land is *mâl*, though the alleged owner puts forward no claim.—10 W. R. 204.

172. The — is on the party who impugns the *bona fides* of a proceeding in execution.—10 W. R. 224, (F. B.) 21 W. R. 97.

173. In a suit against a purchaser to set aside a sale in execution of a decree on the ground of fraud, the *onus* is on plaintiff to prove that the sale was fraudulent.—10 W. R. 280, 13 W. R. 185, 15 W. R. 131, 21 W. R. 288.

174. In a suit upon a *kubala* held in another suit to be *malâ fide* the — is on plaintiff.—10 W. R. 412.

175. In a suit to recover advances alleged to be due from a discharged gomashta who pleads acquittance, the — is on plaintiff.—10 W. R. 421.

176. In a suit for the sale of property in satisfaction of a decree, where the judgment-debtor made it over to his wife in lieu of dower, and she transferred it to defendant, the — was held to be on plaintiff.—10 W. R. 423.

177. Where plaintiff prays for possession by reversal of sale, alleging that she and her deceased husband's minor brother had, with his other three surviving brothers, held joint possession, but that these three had wrongfully sold the land, the — lay on the plaintiff.—10 W. R. 436.

178. Where a party entitled to impeach an alienation by a Hindoo widow of her husband's estate sues to set aside such an alienation, and the defendant establishes, not only that he had a charge on the estate in virtue of a mortgage-deed executed by the widow, but that the debt to him was on account of advances made to her for purposes for which she would have been entitled to alienate the estate as against the real heirs, it does not follow that, because plaintiff had a right to demand this peculiar proof, the ordinary rule which requires the party who alleges payment to prove payment is to be inverted in his favor, or that the debt is to be presumed unless the contrary is shown by the creditor. If he alleges that the mortgage-deed was not *bonâ fide*, the *onus* lies on him to prove his allegation. —(P.C.) 10 W. R., P. C., 47.

179. In a suit where plaintiff complains of the act of defendant founded on an illegal right of easement, the — is on defendant.—11 W. R. 15, 17 W. R. 281.

ONUS PROBANDI (*continued*).

180. In a suit to recover *khas* possession, where defendant pleads a permanent holding, the *onus* is on defendant to prove the exact permanent right at issue.—11 W. R. 162.

181. In a suit for a declaration that a document propounded by the defendant is false, the — is on plaintiff.—11 W. R. 280, 15 W. R. 117, 20 W. R. 415.

182. When plaintiff sued to establish his judgment-debtor's right to certain lands alleged by the latter's brother's wife to be a gift to her from her husband, whose self-acquired property it was, and proved commensality, joint trade, and joint property in the family, the — was held to lie on defendant.—11 W. R. 305.

183. In a suit for confirmation of possession and declaration of title, the defendant's plea that the deeds relied on by plaintiff were fraudulent constitutes no such admission on the part of defendant as to shift the — on to himself.—11 W. R. 328.

184. In a suit for setting aside a summary order under s. 246 Act VIII on the ground that the order was illegal, the *onus* is on plaintiff to prove its illegality.—11 W. R. 422. *See* 15 W. R. 155, 202; 25 W. R. 79.

185. In a suit for declaration of title where defendant questions the *bona fides* of the title, the — is on plaintiff.—*Ib.*

186. Where in a suit for ejectment and possession defendant admits that the tenure of certain lands formerly held by him have passed to plaintiff, but that the lands in dispute are held by himself under another title, the — is on plaintiff.—11 W. R. 501.

187. On whom the — lies in a suit brought on the allegation of unequal partition of the property of a joint Hindoo family.—11 W. R. 561.

188. Where, in a suit on a bond which recites that consideration passed, the defendant admits the execution of the bond but denies receipt of the consideration in whole or in part, the *onus* is on defendant to show that the recitals in the bond are not correct.—(F. B.) 12 W. R. F. B. 25.

189. In a suit for rent where a deed of sale is the foundation of plaintiff's right, he is bound to prove the deed even if it is not objected to in defendant's written statement.—12 W. R. 5.

190. In a suit under s. 230 Act VIII to recover possession, as part of plaintiff's share of a pergunnah, of certain fisheries alleged to be part of a julkur mehal left by partition in the joint possession of all the shareholders, the — was held to be on plaintiff.—12 W. R. 16.

Plaintiff is not bound, under s. 230, to prove title, but is entitled, on mere proof of *bonâ fide* possession, to call upon defendant to prove his title.—(F. B.) 13 W. R. F. B. 80; 14 W. R. 358; 17 W. R. 400; 20 W. R. 111.

191. A mortgagor creating an incumbrance subsequent to the mortgage must show that it has not injured the outturn of the property.—12 W. R. 19.

192. Where plaintiff alleges that the decree, in execution of which her rights and interests had been put up for sale, was fraudulent and collusive, the — is on her.—12 W. R. 147. *See also* 20 W. R. 86.

193. In a suit to recover two parcels of land alleged to have been comprehended in one plot, where defendant's case is that the parcels were divisible into two distinct plots, one held by plaintiff and himself jointly, and the other by himself exclusively, the — was held to lie on plaintiff.—12 W. R. 179.

194. In a suit for possession where defendant pleads limitation, and plaintiff proves that the possession of the party through whom defendant claims was a tenant, the *onus* is on defendant to prove when the nature of that possession was changed and how it became adverse.—12 W. R. 250.

195. In a suit for enhancement the — that a tenure is protected under s. 16 Act X is on defendant, and it is only for plaintiff to rebut any presumption which defendant may make out under that section.—12 W. R. 320.

196. In a suit to recover possession of a tank included in an undivided mehal, where defendants allege separate possession for more than 12 years before the suit, the — is on the defendants.—12 W. R. 468.

197. When plaintiff sues for a specific sum of money due on a balance of account, it is for him to state his case and to show what sum is due on the account.—12 W. R. 529.

198. The — is on the person who calls upon another to show cause why he should not enter into a bond to keep the peace.—(F. B.) 12 W. R., Cr., 60.

199. Where a plaintiff sues to set aside a deed of mortgage executed by him under which possession passed to the mortgagees, on the allegation that consideration had not been received by him, the — is on him.—(P. C.) 12 W. R., P. C., 6.

200. Where a zemindar sues to set aside a mokurruree deed set up by the defendant and to recover possession of the lands covered by the deed, it lies upon the defendant to defeat that right by proving the grant of an intermediate tenure, and the case must be decided not upon the defect of plaintiff's title but upon defendant's right to hold under a perpetual and hereditary tenure at a fixed rent.—(P. C.) *Ib.* *See also* (P. C.) 19 W. R. 252, 21 W. R. 237, 23 W. R. 431. *See* 15 W. R. 191.

201. Where plaintiffs sued to establish a religious trust upon certain lands in the occupation of defendants (plaintiffs and defendants being members of a joint Hindoo family), and stated that the trust was created by a deed of a date subsequent to another deed by which the property had been partitioned by the joint family, but which latter deed, they alleged, had never been acted on, having been a mere device to protect the property from the creditors of one of its members who had become an insolvent,—*Held* that it lay on plaintiffs to make out a sufficient case to set aside the prior deed of partition, which was found to be a registered document, and which was *primâ facie* a good and operative deed.—(P. C.) 13 W. R., P. C., 14.

202. Where general descriptive terms (such as "villages" or the like) are used in a grant, and both the parties have by their acts put a particular construction upon them, and rights depending upon that construction have been enjoyed for many years, it lies upon those who impugn that construction to show that it is erroneous. (P. C.) 13 W. R., P. C., 31.

203. Where plaintiff's allegation is met not by a denial but by a counter-allegation, the — is on defendant.—13 W. R. 91.

204. When plaintiff alleges forcible ouster in a certain year, he is bound to prove such ouster before defendant need be called upon to prove anything.—13 W. R. 113.

205. In a suit to recover possession by the ostensible purchaser of an estate sold for arrears of revenue under Act I of 1845, where it was found that plaintiff had stood by ever since his purchase and had for 11 years allowed defendant to remain in possession and enjoy the usufruct as proprietors, the — was held to be on the plaintiff.—14 W. R. 10.

206. Where a party, who asserts that he is in possession without adducing any evidence in support of his title, sues for confirmation of title as against a *bonâ fide* purchaser for valuable consideration without notice from the party in whose name the property stood, who exercised acts of ownership and gave himself out to the world as the real proprietor, plaintiff cannot put defendant to proof of his title till he has proved his own.—14 W. R. 95.

207. In a suit for possession by the lessee of the purchaser of the rights and interests of a share of a zemindaree, where the defendants allege that though the lands in dispute fell within the ambit of the zemindaree, they did not form part of it, but belonged to themselves by an independent title (*e.g.*, as lakheraj), the *onus* was held to be on defendants to prove the alleged independent title.—14 W. R. 226.

208. Where an heir's title to an estate is uncontested and his possession is only obstructed by an alleged conveyance on the part of an ancestor, it lies upon the party holding possession, and who causes the obstruction, to prove that such a conveyance has taken place.—14 W. R. 275.

209. In a suit by a member of a Mahomedan family to recover a share of ancestral property, where defendant claims it as his separately acquired property, the *onus* was held to be upon plaintiff to prove that the property was acquired for and enjoyed by the whole family jointly.—14 W. R. 374.

210. In a suit against the Official Assignee by an unsuccessful claimant under s. 246 Act VIII for a declaration of his right to certain attached property on the ground that it was his own self-acquired property of which he had been in separate possession, the *onus* was held to be on plaintiff

ONUS PROBANDI (*continued*).

to prove the specific title which he had set up.—15 W. R., O. J., 7.

211. In a suit for possession where defendant admits plaintiff's possession up to ouster, but contends that that possession was not that of an owner but only permissive possession as of a tenant, the — was held to lie on defendant.—15 W. R. 32.

212. In a suit to remove certain outlets in an aqueduct on the allegation that the plaintiff is entitled to the exclusive use of the water, the — is on plaintiff.—15 W. R. 83.

213. In a suit for declaration of plaintiff's reversionary title as heir to his uncle's property and for reversal of a deed of sale from that uncle set up by defendant, the — was held to lie on defendant.—15 W. R. 96.

214. When plaintiff sues defendant for damages by reason of his wrongful occupancy of plaintiff's land, it is for plaintiff to show that such occupation has taken place. —15 W. R. 144.

215. A plaintiff starts his case sufficiently if, seeking under s. 246 Act VIII to set aside an attachment and sale, he shows that a deed of sale has been executed in his favor by the judgment-debtors and that consideration-money has passed and possession been given. The — is on defendant if he alleges a collusive sale.—15 W. R. 155.

216. Where plaintiff claimed certain lands as belonging to his putnee estates and defendant alleged that the lands in question formed part of the land for which he had obtained a decree in a resumption suit of which he had ever since been in possession, and it appeared that the lands were not the same as those given to defendant by the resumption decree.—*Held* that plaintiff was not bound to prove that the lands appertained to his estates.—15 W. R. 183.

217. In a suit for possession, where plaintiff claims under a pottah and defendant does not deny the execution of it but only the power of the lessor to grant it, the — is on defendant.—15 W. R. 208.

218. In a suit to recover possession of land within plaintiff's estate where defendant sets up a rent-free title, all that plaintiff is required to show is that either he or his predecessor had received rent for the land at some time subsequent to the Perpetual Settlement, in which case the *onus* of proving title falls on defendant.—15 W. R. 299. *See also* 20 W. R. 457.

So also in a suit for possession by an auction-purchaser at a sale for arrears of revenue, plaintiff is bound to show that he or his predecessors have received rent for the land in the possession of defendant.—23 W. R. 388.

219. Where a plaintiff had no right of occupancy, but was entitled, under a special contract, to a pottah at a fair and equitable rate, ss. 5 and 8 Act X were held not applicable to the case, and the *onus* lay on him to show what was a fair and equitable rate.—15 W. R. 420.

220. In a suit for rent due by a ryot after the expiry of his lease, the *onus* is not on the ryot to prove relinquishment, but on the landlord to prove holding over.—15 W. R. 454. *See also* 22 W. R. 510.

221. Where plaintiff started a *primâ facie* case, by alleging that the *bye-mokasa* set up by defendant's wife was executed in fraud of creditors and by showing a sufficient motive for the fraud, the *onus* was shifted on defendant to prove the *bona fides* of the deed.—15 W. R. 507.

222. In a suit for confirmation of possession on an adjudication of a particular title, the plaintiff is bound to show, not only that he was in possession at the date of suit, but that the title set up by him is a good and valid title.—15 W. R. 286, 16 W. R. 27, 19 W. R. 282.

223. In a suit for possession with mesne profits on the ground of a butwarra under Reg. XIX of 1814, where defendant, admitting the allegation, urged that plaintiff had given up possession as soon as the butwarra was completed, the — was held to be on plaintiff.—16 W. R. 200.

224. Where defendants pleaded that the *ousat* talook in dispute, which they had hitherto claimed as their purchase for valuable consideration, was a mere fiction, the — was held to lie on them.—17 W. R. 15.

225. A compromise of a claim of debt, confirmed by a decree of a Court, cannot be set aside after many (16) years without distinct proof of fraud, the — lying with the party who alleges fraud.—(P. C.) 17 W. R. 117.

226. Where one brother of a joint Hindoo family transferred his interest in the joint property to the other brothers after a decree had been passed against him although before attachment, the *onus* was held to be on those brothers to prove the *bona fides* of the transaction; the mere fact of the passing of some money from one hand to another not necessarily constituting such a transfer of interest as would indicate a *bonâ fide* transaction.—17 W. R. 499.

227. Where a deed of compromise clearly showed that the lands were in exchange for the alleged *khoodkasht* and *khamut* lands of her father, the — was held to be, not on the defendants as to the fact of the exchange, but on the plaintiff to start her case by some *primâ facie* evidence.—17 W. R. 559.

228. The rule which, in cases where defendant pleads *lakheraj*, lays on plaintiff the *onus* of proving that the land is *mál*, is not inflexible but may be altered according to circumstances.—18 W. R. 191.

229. In a suit to establish plaintiff's title to and for possession of a jote which was admittedly the *raj-baree* jote of defendant's ancestor, the real point is how such a jote came into the hands of plaintiff, and the *onus* is on him to show that defendant's ancestor or his heir relinquished the jote to the zemindar and that the zemindar had authority to *puttun* the jote to plaintiff.—18 W. R. 192.

230. The *onus* of showing that the admitted rental was not recovered during the period of A's wrongful possession is on A.—18 W. R. 251.

231. Where, in a suit brought by the son of K K's daughter against the widow of the youngest of K K's three sons (the two elder sons having died unmarried) for a share in a joint family estate, the defendant alleged that the two elder sons were disqualified and claimed a portion as the exclusive portion of her husband under an alleged gift,—*Held* that as the presumption of Hindoo law was against the alleged disqualification, and as the whole of the disputed share was found in the possession of the joint family even after the youngest son's death, the *onus* was on defendant to prove the alleged disqualification and the alleged gift.—18 W. R. 375.

232. The party objecting to a partition as not convenient is bound to show some arrangement which will better satisfy all parties and be more equitable.—18 W. R. 498.

233. Where plaintiff, having obtained a decree in a suit for possession, found difficulty in executing it owing to judgment-debtor preventing identification of the land decreed, the Court refused to throw on the debtor the *onus* of showing the boundaries, the *onus* of proving his claim being on plaintiff.—18 W. R. 526.

But when judgment-debtor maintains that the property which the judgment-creditor specifies is not the subject of the decree, the *onus* is on him to point out the actual property concerned.—22 W. R. 330.

234. The *onus* of proving the grant of a *jagheer* tenure was held to be on plaintiff who set up such a tenure.—(P. C.) 19 W. R. 140.

235. In a suit to recover the balance of purchase-money alleged to have been due upon the sale of a decree, where plaintiff's case was that the consideration-money was not paid, but a *rooqua* given for it, payable when the mutation of names took place, the *onus* of proving non-payment was thrown upon plaintiff in consequence of the acknowledgments she had made of the receipt of the whole purchase-money, viz. an admission made and recorded under Act XX of 1866 at the time when the deed was registered, and an acknowledgment made in the petition presented to the Court which made the decree for mutation of names.—(P. C.) 19 W. R. 149.

236. Where, in a suit between judgment-debtors to recover money alleged to have been paid in satisfaction of decrees obtained against them by J who had been wrongfully kept from enjoying his share of the property, and one of the defendants answered that he entered into possession as plaintiff's mortgagee, and plaintiff maintained that the right of possession terminated before the origin of J's claim, the *onus* was held to be on plaintiff that it had so terminated.—19 W. R. 156.

237. Where a plaintiff has the general title to the property in the suit, and the defendant sets up an interest as mokurrureedar, the — is on the defendant.—19 W. R. 188. *See also* 22 W. R. 417.

237*a*. Where limitation is set up as a defence to a suit to

Onus Probandi (*continued*).

enforce the right to a share of joint family property under cl. 13 s. 1 Act XIV of 1859, the *onus* is on plaintiff to show, not merely that the property is joint family property, but that he has had possession of it in some way within 12 years.—19 W. R. 192, 23 W. R. 381. *But see* 24 W. R. 1.

238. Where ancestral property has apparently descended in the ordinary way of Hindoo property, first to the son and then to the mother, it lies on those who say that it is confined to the direct descendants of the original donee to prove their case, and show that by some custom that was the proper construction of the grant.—(P. C.) 19 W. R. 211.

239. Where R's title was declared by a decree as a brother by adoption to L and a co-sharer of his family property, but no possession was actually directed to be given to R except of the zemindaree which was the principal family estate,—*Held* that R's title to two other lots which were no part of the zemindaree proper was the same as his title to the zemindaree, and that the — lay upon those who insisted that the two lots did not form part of the joint family estate.—(P. C.) 19 W. R. 231.

240. The — is on a plaintiff whose claim is not based upon the ordinary Hindoo law of inheritance but upon a special custom.—19 W. R. 239.

241. In a suit by a shareholder for his share of the rent, the *onus* is on plaintiff to prove that which he alleges is the amount of his share, rather than on defendant to prove that plaintiff's share is less than he alleges it to be.—19 W. R. 283.

242. Where a party purchases at an execution-sale the rights and interests of a lakherajdar, and another claims a *mourosee* tenure in the property so purchased, the claimant is bound to establish his *mokurruree* title.—19 W. R. 286.

243. The — is on defendant who objects under s. 7 Act VIII that plaintiff relinquished or omitted to include in a former suit the portion which he now claims and in respect of which he then had a cause of action.—19 W. R. 429.

244. Where an auction-purchaser brought a suit to obtain possession of certain julkurs which he alleges form part of his zemindaree, the defendant being in possession thereof, and his possession having been confirmed in an Act IV case,—*Held* that the *onus* was on plaintiff to show that the julkurs in dispute formed part of the assets of the zemindaree at the time of the Perpetual Settlement.—(P. C.) 20 W. R. 14.

245. In a suit for rent by a shareholder where defendant contends that he is not bound to pay otherwise than by entirety to the person entitled to the whole rent, the *onus* is on plaintiff to show that he is entitled to sue for a fractional portion.—20 W. R. 76.

246. In a suit for the sale of property mortgaged as security for a loan under a zur-i-peshgee ijara lease and of which plaintiff has been dispossessed under color of a decree, he having for many years had the usufruct of the land for the purpose of repayment, the *onus* was held to be on him to show that there was anything remaining due to him, and that the ijara gave him the right to sell the property upon some contingency.—20 W. R. 178.

247. In a suit to enforce a right to an easement in the shape of a drain passing across defendant's land, where plaintiff does not claim under a specific grant but relies upon user, it is incumbent on plaintiff to prove a user for 20 years before suit in order to establish his right of easement.—20 W. R. 328.

248. In a suit to recover possession of land of which plaintiff had failed to recover possession in an action under s. 15 Act XIV, defendant pleading acquisition by purchase from plaintiff's father, the — was held to be on plaintiff.—20 W. R. 414. *See also* 21 W. R. 52.

249. What plaintiff must prove in a suit for enhancement with reference to cl. 1 s. 18 Act VIII of 1869 (B. C.).—20 W. R. 416.

250. Where a zemindar sues a talookdar for enhancement of rent upon a kuboolent which he does not produce, he is bound to give evidence as to why he cannot produce the kubooleut before he can call upon the defendant to produce his pottah.—20 W. R. 459.

251. Where a judgment-creditor admits having obtained a possession of a portion of the land without opposition from the judgment-debtor, the *onus* is on him to show that he was unable nevertheless to obtain possession of the remainder.—21 W. R. 241.

252. The — is on the person who alleges that a party is disqualified under the Hindoo law to succeed to property owing to his being a leper.—21 W. R. 219.

253. Where a decree-holder, after purchase at an execution sale of his judgment-debtor's rights and interests, sues for a declaration of title and for possession, defendant's plea that neither plaintiff nor his judgment-debtor was in possession within 12 years prior to suit, throws the — on plaintiff and is not rebutted by the fact of the suit having been brought within 12 years from the date of the auction-purchase.—21 W. R. 282.

254. In a suit against a zemindar to reverse the sale of a putnee tenure on the ground of non-service of notice, the *onus* of proving service lies on the defendant.—21 W. R. 397.

255. In a suit by a Hindoo widow to recover a share of property alleged to have been inherited from her husband and which had been mortgaged by his brother and sold under a decree obtained on the mortgage, where the question raised was whether the money for which the property was mortgaged had been borrowed by the brother for his own use or for the benefit of the family,—*Held* that it was for the defendant to prove that the plaintiff had any benefit from the money, and not for the plaintiff to prove that she had had no benefit, unless it was found that there was any collusion, in which case the — would be shifted.—22 W. R. 171.

256. The party who seeks to exclude one of the heirs to property, from a share of the inheritance, is bound to show the cause of the exclusion.—22 W. R. 348.

257. In a suit for ejectment as a trespasser, if defendant establishes possession as a tenant, plaintiff is bound to show that the tenancy has been put an end to.—22 W. R. 368.

258. In a suit brought against a minor, the *onus* of establishing the material facts of his case was held to lie on the plaintiff, who could derive little or no benefit from admissions made on the part of the minor defendant.—22 W. R. 469.

258*a*. In a suit for possession where plaintiff sets up a late purchase against a defendant whose title is derived from a sale in execution of a decree which was made on a mortgage-bond, and alleges that the earlier transaction was fraudulent, the *onus* is on plaintiff to start his case by showing certain facts from which the Court ought to infer collusion between the mortgagee and mortgagor.—23 W. R. 56. *But see* 23 W. R. 324.

259. In a suit by mortgagees under a zur-i-peshgee mortgage, not only for possession, but also for setting aside a mokurruree lease which was alleged to have been granted by the mortgagor prior to the mortgage and under which defendants had been in possession for some time in accordance with a Magistrate's order,—*Held* that the *onus* was on plaintiff to impeach the validity of the mokurruree; but this having been done, and a strong *primâ facie* case made out, the *onus* was shifted on defendants to show that the mokurruree was executed before the zur-i-peshgee and was granted *bonâ fide* for a real consideration and intended to be operative as between the mortgagor and the lessee.—(P. C.) 23 W. R. 111.

260. The presumption that a Hindoo family is joint may be rebutted; and where this is done, the — is thrown on the opposite side.—23 W. R. 141.

261. In a suit to have a purchase made at an execution sale set aside on the ground that it was not *bonâ fide*, the — is upon plaintiff, and it is not sufficient for him to show circumstances which create a suspicion of the *bona fides* of the transaction. But in a suit for possession of land and for a declaration of plaintiff's title by virtue of purchase, it is not sufficient for him to produce a deed executed by a judgment-debtor, but he must free his case of such suspicion as may arise from his own position with reference to the vendor and from any such circumstance as the improbability of such a purchase having been made.—23 W. R. 141. *See also* 24 W. R. 209.

262. In a suit for arrears of rent and for ejectment in consequence of non-payment, where defendant challenged the rate claimed as well as plaintiff's right to sue alone,—*Held* that the *onus* lay on plaintiff to prove his claim to the rate of rent sued for and to show that he was sole proprietor.—23 W. R. 289.

263. In a suit for *khas* possession against a lessee who sets up a title to defeat plaintiff's admitted right as zemindar, it is for defendant to prove the title so set up.—23 W. R. 291.

264. Where a decree in execution of which formal pos-

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session, has been obtained, is impugned by the person in actual possession as fraudulent and collusive, the *onus* lies on the impugners to prove their allegation.—23 W. R. 329.

265. Where a suit is brought under s. 27 Act VIII of 1869 (B. C.), it is for plaintiff to prove that the land is a part of his tenure and that he has been illegally ejected.—23 W. R. 383.

266. Where the fact of payments by a banking firm is distinctly put in issue, the books of the firm being at most corroborative evidence, the mere general statement of the banker to the effect that his books were correctly kept is not sufficient to discharge the — that lies upon him, particularly if he has the means of producing much better evidence.—(P. C.) 23 W. R. 390.

267. A defendant who pleads plaintiff's minority as a bar to the suit, is bound to substantiate the plea.—23 W. R. 395.

268. A tenant who has executed a kubooleut in the name of A and pleads non-liability to A for the rent on the ground that A is *benamee* for somebody else, is bound to prove who that somebody else is, and that the ostensible owner is not the real owner.—24 W. R. 44.

269. In a suit to recover possession when plaintiff proves previous possession and that the property is his hereditary holding, the defendant who pleads that plaintiff relinquished it is bound to prove relinquishment.—24 W. R. 62.

270. In a suit to recover possession of a distinct share of a talook alleged to have been purchased by plaintiff (the wife of one K) at a private sale from M and others and to have been in her separate possession by collecting rents until she was forcibly dispossessed by defendant, where defendant pleaded that in the same year she had purchased at a sale in execution the rent-free lands of K and others, that she was in possession and knew nothing where plaintiff's lands lay,—*Held* that plaintiff was bound to prove the existence of the distinct share said to have been purchased by her.—24 W. R. 126.

271. Where a claim was founded upon a distinct statement of an account signed by the defendant in which he acknowledged a particular sum to be due to the plaintiff, — *Held* that it was for defendant to produce evidence to rebut the *primâ facie* case made against him.—(O. J.) 24 W. R. 202.

272. In a suit to recover possession of a house with arrears of rent, where defendants pleaded that plaintiff had sold his rights by a *kubala*, the execution of which was admitted,—*Held* that as plaintiff was found to have been in possession all along by realization of rents, the *onus* of proving the *bona fides* of the transfer would be on defendant.—24 W. R. 212.

273. A plaintiff coming into Court for confirmation of possession is bound first of all to prove his own possession.—24 W. R. 220.

274. In a suit for contribution for money admittedly paid by plaintiff into the Government treasury on account of defendant's share of the revenue, where defendants plead previous payment to plaintiff,—*Held* that the *onus* of proving such payment was upon defendants.—24 W. R. 250.

275. Under s. 119 Act VIII the *onus* of proving non-service of summons is on the party claiming the benefit of that section.—24 W. R. 262.

276. Where joint family property is sold in execution of a decree against the head of the family, and purchased *bonâ fide* and for valuable consideration, the *onus* lies on members of the family who impugn the sale to show that the decree was an improper one.—24 W. R. 281.

277. Where an application is made to the Court to attach, as due and owing to the applicant from A, a sum of money which has been placed in the hands of B by C, it is incumbent on the applicant to prove that the money belongs not to C but to A.—25 W. R. 20.

278. In a suit for possession and for establishment of title against parties in possession under an award of the criminal authorities under s. 530 Act X of 1872 the — is on plaintiff.—25 W. R. 20.

279. Where two Mahomedan women sued for confirmation of their right to certain property on the allegation that they had purchased the same with their own funds (dower-money), and defendants pleaded that plaintiffs' husbands had for the purpose of evading payment of debts purchased the property in the names of their wives, the — was held to be on plaintiffs.—25 W. R. 54.

280. In a suit for ejectment by a landlord against a defendant the term of whose tenancy was alleged to have expired,—*Held* that the *onus* was on the landlord to show that the tenancy had ceased to exist.—25 W. R. 56.

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Opium.

1. Where — was found in the possession of a person who was servant of the accused and who alleged that he obtained it from the wife of the accused and that the wife had purchased it from an — cultivator,—*Held* that the accused could not be convicted under s. 53 Act XXI of 1856, as it had not been shown that the purchase by the wife was authorized by the accused, and therefore her possession of the — could not be considered the possession of the accused.—20 W. R., Cr., 54.

2. Act XXI of 1856 has not been repealed, so far as regards the Lower Provinces of Bengal, by Act X of 1871.—22 W. R., Cr., 31.

See High Court 119.
Interest 30.
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Orchard.

There is no presumption that — lands in Behar are held on a *bhaolee* tenure, there being many instances of a *nukdee* tenure.—2 W. R. 12.

See Onus Probandi 83.

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See Dower 7.
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Limitation 78.

Ousut Talook.

A suit in a Civil Court to try the validity of an — claimed by defendant is not affected by a previous suit successfully brought by defendant under Act X to recover possession after illegal ejectment.—2 W. R. (Act X) 85.

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See Hindoo Law (Alienation) 14.
,, ,, (Inheritance and Succession) 88.

Pacheet.

1. *Quære.* Whether the zemindaree of — is indivisible or inalienable.—P. C. R. 221.

2. In this case the grant by the former Rajah of a portion of the zemindaree was held to be only for the maintenance of the grantee, and consequently to be resumable by the present Rajah.—*Ib.*

3. The present Rajah's claim to possession of certain lands as khamar lands of his zemindaree, and to resumption of a grant alleged to have been made for maintenance, was dismissed on the evidence.—2 W. R. 171.

Paiks (Midnapore).

See Onus Probandi 14.

Paper-Book.

1. The petitioner in a regular appeal to the High Court should not be required to deposit the costs of translating, etc., any papers of which he has not furnished a list with a view to their inclusion in the —.—23 W. R. 458.

2. If the petitioner in such an appeal does not furnish the Deputy Registrar with a list of papers which he desires to be included in the —, that officer ought not to serve him with an estimate of the cost of printing, etc.—23 W. R. 459.

3. In appeal to the High Court, where the matter is more than 10,000Rs. in value, the appellant is bound to put the whole case in the — and ought not to be allowed to read at the hearing anything which is not in the —.—24 W. R. 143.

See High Court 164.
Rules of Practice 44.

Pardon.

1. Application for — or mitigation of punishment for a political offence should be made to the Executive Government.—7 W. R., Cr., 100.

2. A Sessions Judge is not competent, *before* a trial, to instruct a Magistrate to tender a — under s. 210 Act XXV of 1861.—7 W. R., Cr., 114.

3. Procedure under ss. 209, 210, and 211 Act XXV of 1861 when a tender of conditional — is made.—12 W. R., Cr., 80.

4. Procedure under s. 211 when a person to whom a tender of conditional — has been made does not conform to the conditions under which the — was tendered.—14 W. R., Cr., 10. *See* 19 W. R., Cr., 43.

5. S. 349 Act X of 1872 was held not to take away from the Magistrate the power of committing for trial on a charge of giving false evidence, instead of on the original charge, a party who, having been charged along with others with murder, and having had a conditional — granted to him by the Magistrate, retracted before the Sessions Judge the statements he had made before the Magistrate.—23 W. R., Cr., 12.

Parsees.

1. An adoption made by a Parsee immediately before his death would render improbable the execution of a will by him a short time previous thereto.—(P. C.) 5 W. R., P. C., 102 (P. C. R. 28).

2. Although in cases of adoption by *dhurmo-putro* (partial adoption) it is not indispensably necessary that a declaration should be made on the third day after the decease, yet it is usual to make such a declaration and to take a writing from the *dhurmo-putro.—Ib.*

3. In the absence of any such writing, and upon the whole evidence, the adoption in this case was pronounced as a *paluk-putro* and not merely as a *dhurmo-putro.—Ib.*

See **Husband and Wife 5.**

Partition.

1. — of a dwelling-house may be claimed as of right by a Hindoo. The difficulty of making a — is no ground for the denial of the right.—1 Hay 71 (Marshall 35).

A suit for — of a family dwelling-house may be brought either by one of the members of the family or by a purchaser from such member.—22 W. R. 294.

2. Where the members of a joint Hindoo family, by *ikrarnamah*, mutually declared their intention of enjoying their own shares and disclaimed all rights as joint owners in the shares of their coparceners, and appointed arbitrators to make a division of their shares, but one of the parties to the submission died before any award was made in pursuance thereof,—*Held* that the *ikrarnamah*, coupled with separation in mess, operated as a —, and that it was wholly immaterial whether any actual division of the property had taken place.—Sev. 503.

3. A deed of — between two brothers based on a compromise of suit, ratified by a decree of the Sudder Court, and putting an end to litigation previously entered into by their father, cannot be set aside without strict proof of haste and precipitancy of the settlement, inequality, restraint, coercion, or fraud.—(P. C.) 3 W. R., P. C., 51 (P. C. R. 355).

4. In a suit instituted by one of the illegitimate children of a Christian father by different Hindoo women who had by agreement constituted themselves parceners after the manner of a joint Hindoo family, a deed of compromise was executed by the parties providing for the mode of enjoyment and against the sale, mortgage, lease, or security of any separate share,—*Held* (1) that these provisions of the deed did not extend to prevent alienation by devise, nor affect the right of inheritance; and (2) that the arrangement between the parties included the right of survivorship, the claims of the State only arising on failure of the heirs of the last survivor.—(P. C.) 2 W. R., P. C., 4 (P. C. R. 452).

4*a*. An actual — by metes and bounds is not necessary to render a division of undivided property complete. But when the members of an undivided family agree among themselves with regard to particular property that it shall henceforth be the subject of ownership in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with, and each member has in the estate a definite and certain share which he may claim the right to receive and to enjoy in severalty although the property itself has not been actually severed and divided.—(P. C.) 8 W. R., P. C., 1 (P. C. R. 657); 8 W. R. 82, 116, 302, 385; 9 W. R. 87; 12 W. R. 478; *ib.*, P. C., 40. *But see* 14 W. R. 31, 345; 17 W. R. 102.

So under the Mitacshara.—6 W. R. 139, 7 W. R. 488, 9 W. R. 61, 10 W. R. 273, 17 W. R. 102, 23 W. R. 395, 25 W. R. 97, 355.

Even without actual — by metes and bounds, if two coparceners enjoy the rents and profits of their shares without throwing them into a common fund, it must be held that there was a — between them, and that they are not members of a joint family.—15 W. R. 442.

So also as to different members of a joint family holding separate portions of the banks of a tank severally.—17 W. R. 210.

But the question in each case of disputed — must be one of *intention*; whether the intention of the parties, to be inferred from the instruments which they have executed and the acts which they have done, was to effect such a —.—(*Affirming* 8 W. R. 116) (P. C.) 21 W. R. 214; (P. C.) 23 W. R. 412.

5. A suit will lie for the separate possession (without any distribution of the *jumma*) of a share of an estate in proportion to the plaintiff's share.—1 W. R. 164.

6. A decree restoring possession of a share of property held in joint possession, does not necessarily confer separate possession.—1 W. R. 206.

7. A private —, if full and final as among the parties to it, will have the same effect as the most formal — on the right of pre-emption.—2 W. R. 47.

7*a*. Any act or declaration showing an unequivocal intention on the part of any shareholder to hold or enjoy his own share separately, and to renounce all rights upon the shares of his coparceners, constitutes a complete severance or —.—3 W. R. 41.

A suit by one member of a joint Hindoo family for a declaration of his right, was held not to be a sufficient indication of such intention.—12 W. R. 510. *See* 17 W. R. 102.

7*b*. Under what circumstances alone a number of a joint Hindoo family is barred from claiming a — of the family property.—3 W. R. 61.

7*c*. In a suit for — of joint family property in which the defendant pleads that a — has already taken place, the *onus* is on the defendant to prove the alleged —. Everyone entitled to a share must account for such portion of the joint estate as may have come into his hands.—5 W. R. 121.

He cannot claim — of one portion without bringing the other into hotchpot.—15 W. R. 111, 25 W. R. 353.

7*d*. Coparceners may on — retain possession severally of such joint lands as they may have taken separate possession of with the consent of at least a majority of the coparceners.—5 W. R. 208.

7*e*. According to Hindoo law — amongst brothers should be made after paying the debts of the ancestor; but where division of the estate (not by metes and bounds) is made by the brothers whilst a decree against their late father remains unsatisfied, each brother is bound to satisfy his proportion of the decree so far as the assets which he takes will go.—11 W. R. 125.

7*f*. Although direct evidence of a — is not necessary, yet *primâ facie* presumption is not lost sight of, viz. that every Hindoo family is joint until the contrary is proved.—11 W. R. 336.

7*g*. According to the Vivada Chintamonee, which is an authority in the provinces governed by the Mitacshara, where there is a doubt with regard to — among co-heirs, it may be removed by the evidence of kinsmen and the like.—*Ib.*

8. An agreement by a joint tenant that he will not sue out a writ of —, does not prevent him from selling his interest in the estate, or bind the purchaser, who becomes, tenant-in-common, from partitioning his estate.—11 W. R., O. J., 19.

9. In all cases of joint ownership each party has a right to demand and enforce —.—12 W. R. 160.

10. A suit in the nature of a — suit cannot be properly dealt with unless all who are admittedly shareholders in the joint property are before the Court.—12 W. R. 256.

10*a*. On partition of an estate, the Hindoo law recognizes the right of a grandmother to maintenance, but not to any share of the estate.—12 W. R. 409. *See also* 13 W. R. 66.

11. The purchaser of a share of an undivided *lakheraj* estate has a right to apply for a — of his share from those of the other shareholders.—13 W. R. 74.

12. In such a case (as distinguished from the case of a *revenue-paying* estate) the Civil Court alone, and not the Collector, would have jurisdiction to make the —.—*Ib.*

13. In drawing up the final decree for possession by — of *kâmut* land and for mesne profits, the Judge should state the boundaries and extent of each share and the exact amount due as mesne profits.—14 W. R. 92.

13*a*. The principle that a family ceasing to be Hindoos in religion may still enjoy their property under the Hindoo law, is applicable, *inter se*, to the members of a Hindoo family entering into possession of an estate under a compromise by which the members divided the estate among themselves on certain terms.—(P. C.) 14 W. R., P. C., 33.

PARTITION (*continued*).

14. Though, under s. 27 Act X of 1859, the zemindar is not bound to recognize any — of a registered tenure without his consent to such —, such consent need not be in writing but may be inferred from his acts.—15 W. R. 255. *See* 15 W. R. 320.

15. Where a coparcener in *ijmalee* land, by erecting a building, takes possession of more land than he would be entitled to on a —, the remedy is to sue for a — and not for demolition of the building.—16 W. R. 10.

16. Where joint property is divided among the members of a joint Hindoo family in pursuance of a compromise, each takes his share of the property not as ancestral property, but as his own absolute property.—16 W. R. 221.

17. In a suit for —, the plaintiff's right cannot be questioned unless barred by limitation or by any right of easement which the defendants enjoy.—17 W. R. 74.

18. In giving a decree for —, the Court refused to make any decree permitting plaintiff to build a house, but left him to do what he pleased with his own land consistently with the legal rights of others.—*Ib.*

19. Though a — of a *lakheraj* tenure cannot be effected under the provisions of Reg. XIX of 1814, yet a Civil Court, in effecting such a —, may well be guided by the rules laid down in that Regulation so far as they are applicable.—17 W. R. 137.

20. A Hindoo widow being competent to claim — as against her co-sharers, a purchaser of her estate at an execution-sale may do so likewise.—18 W. R. 23.

21. Items of property held not to form the subject of —. —*Ib.*

22. A private —, though not binding against the Government, or against a purchaser at a sale for arrears of revenue who derives his title directly from the Government, is binding as between the parties to it and persons claiming title under them.—18 W. R. 327.

23. The Privy Council agreed with the findings of the Lower Courts that the documents proving the agreement to refer the dispute to arbitration and the award of the arbitrators, were not spurious, and that the property in question was joint property and was partitioned in the way declared in the award.—(P. C.) 20 W. R. 25.

24. A descended impartible estate may be held separately after separation of the holder from the other members of the family.—20 W. R. 154.

24*a*. Where ancestral property mortgaged by the father was sold in execution of a decree, and the sons (members of a joint family) sued for determination of right and —, —*Held* that the mortgagee could not stand in a higher position than the father against whom the sons had a right to require — so far as the property was ancestral. —20 W. R. 170.

24*b*. In a joint family under the Mitacshara law, a father during his life may at his pleasure — the whole of the property in his hands or any of it; and if he does so, he must allot a share to his wife for her maintenance in addition to the share which he takes himself: also the sons can at any time during the father's life, at their pleasure (even when any of the contingencies which entitle them to divide the *whole* estate have not happened), call upon him to — the ancestral property; and in that event also the mother must have her share as before. After the father's death, the sons may divide the property among themselves; but then too they must give a share to their father's widow, and to an unmarried sister if there is one. In all the cases alike the mother's share in the ancestral property must be equal to that of a son.—20 W. R. 336.

25. A — of property between members of a family is no evidence against a third party unless it is shown that there has been some possession in accordance with the —.—21 W. R. 145.

26. Where one of several joint owners desires to have a — of a compound hitherto held in common, mere inconvenience to the others is not a sufficient obstacle to such —.—21 W. R. 152.

27. Nor is the fact of the public or other persons having acquired rights of way over the property sought to be divided, a reason in law against such —, as those rights remain notwithstanding the —.—*Ib.*

28. It is not necessary that there should be evidence of disputes and quarrels, or of any pecuniary loss or gain, between the joint owners of a property, before a Court can interfere to make a —; nor can a right to perform the worship of an idol deprive any of the joint owners of the right to a — and compel the Court to say that the service shall be performed by them jointly instead of by turns.—22 W. R. 437.

29. A — in respect of which no formalities have been observed, and no record preserved, except a list representing the result arrived at, is not in itself obligatory on a minor who has the option of repudiating it when he comes of age or within a reasonable period after that date.—23 W. R. 68.

30. In a suit for possession of land which plaintiff's vendors had purchased jointly with those under whom defendants claimed,—*Held* that it was not necessary for plaintiff to show an actual formal —, but that it was sufficient for his case to show that his vendors, and he himself after them, had in fact for a considerable time held their share in a separate form.—23 W. R. 259.

30*a*. Where a *neampotro* executed by the father of a joint Hindoo family prohibited — amongst his four sons, and one predeceased the father without issue, and another also predeceased the father, leaving two sons who were not bound by the prohibition,—*Held* that, as these grandsons were parties having interest in the property, conditions which did not and could not affect them, ought not to restrain the other co-sharers.—23 W. R. 297.

31. A zemindar may recognize the division of a holding, either formally by actually dividing it into parts, or impliedly by receiving rent from parties holding separately. —25 W. R. 19.

32. Where a property has been divided, and one of the parties affected by the division complains of what has been done, he is not at liberty to ask the Court to order the rectification of a small portion of the property so divided: if the arrangement is not to be carried out as it stands, it must be entirely revised, *i.e.* the whole of the property divided must be again brought before the Court, and there must be a division *de novo* of the property in its entirety. —25 W. R. 358.

33. The respondent's absolute title (under a final decree in a — suit) to an estate, was declared unencumbered by any putnee rights in the appellants.—(P. C.) 26 W. R. 93.

See Ancestral Property 11, 12, 20, 21.
Appeal 15.
Arbitration 20.
Auction-Purchaser (Revenue Sale) 21.
Building 9.
Compromise 17, 18.
Co-sharers 1, 12, 26, 30, 35.
Costs 30, 74.
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Evidence (Presumptions) 23.
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„ „ (Inheritance and Succession) 33, 37, 76, 88.
„ Widow 27, 32, 74, 75, 112.
Hosaipore Raj.
Joinder of Parties 35.
Judgment 13.
Jurisdiction 232, 483, 489, 490.
Limitation 14.
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Mokurruree Tenure 22.
Onus Probandi 25, 54, 64, 132, 187, 201.
Pacheet 1.
Partition (Butwarra) 10.
Practice (Execution of Decree) 212.

PARTITION (*continued*).

See **Practice (Possession) 81.**
Primogeniture 1.
Putnee Talook 79.
Rawutpore.
Registration 152.
Rent 71.
Res Judicata 62.
Self-acquired Property 4.
Survey 19.

Partition (Butwarra).

1. The purchaser of a specific portion of the land of an estate separately registered under s. 2 Act XI of 1859, is not entitled to claim a — so as to obtain a share of the whole estate proportionate to the revenue he pays.—W. R. Sp. 59 (2 R. J. P. J. 75).

2. A — is only binding on the parties to it.—Sev. 217.

3. — proceedings under s. 20 Reg. XIX of 1814 are only final as to lands which are the subject of —.—W. R. Sp. 30.

4. Private — papers are good evidence towards showing what lands are comprised in the estate at the time of the —.—W. R. Sp. 238 (L. R. 16).

5. A — does not extinguish rights of tenants; nor does the fact of one of the proprietors being the tenant destroy his tenant-right because another has had the land allotted as part of his share.—W. R. Sp. 271.

6. Rights created under a — in regard to certain land, are not affected by a decree for that land obtained upon a previous compromise.—1 W. R. 286.

7. A — by the revenue authorities under s. 20 Reg. XIX of 1814 is final.—1 W. R. 323; 2 W. R., Mis., 51 (4 R. J. P. J. 309). *See* 15 W. R. 471, 16 W. R. 190, 271.

8. An auction-purchaser who takes the place of a defaulting shareholder, and makes objection to the — proceedings, is a party to the —.—1 W. R. 323.

9. A — is only conclusive between the shareholders themselves, but not between them and other parties holding under-tenures, etc., at the time.—4 W. R. 80.

It is not binding upon the ryots.—21 W. R. 29.

10. A — of an estate cannot be demanded after a private partition thereof more than 50 years ago and subsequently maintained in a judicial decision, even though a regular separation of one share has been intermediately obtained by a suit in a Civil Court.—5 W. R. 40.

11. Before a purchaser at an execution-sale of a share of a specific mehal in an estate is entitled to possession and to a — of his purchase, its nature and extent must be clearly determined and defined in the Civil Courts.—5 W. R. 49.

12. Where an estate is held in separate possession, a — of the whole for the purpose of apportioning land according to the jummas of the shareholders who had severally entered into engagements with Government, cannot be insisted upon by one of the proprietors under s. 30 Reg. XIX of 1814.—5 W. R. 186.

13. The right to — of an estate paying revenue to Government can only be determined by the Civil Court, but the — itself can be made by the Collector alone under Reg. XIX of 1814.—6 W. R. 15. *See* 13 W. R. 74, 15 W. R. 242, 471; 16 W. R. 34; 18 W. R. 147.

14. Where a Collector, in laying down the boundaries of an estate under —, does not proceed under Reg. VII of 1822, the map made is not a binding award on the proprietor of the neighbouring estate within the meaning of cl. 6 s. 1 Act XIV.—6 W. R. 75.

15. The dispossession of a party from land assigned to him under a —, made in legal form and duly sanctioned, although a wrongful act, is no ground for restoration to the state of things which existed before the —.—6 W. R. 314.

16. Lands held in joint possession, each proprietor receiving his proportion of the rent according to his interest in the land, cannot be divided under the Butwarra laws.—7 W. R. 51.

17. The Lower Appellate Court's order for the — of a shikmee tenure was upheld on the ground that it did not affect the rights of Government, nor of the zemindar, nor of the plaintiff's co-shikmeedars.—8 W. R. 128.

18. Where the Collector calls upon the proprietors of an estate to pay the fees of the Butwarra Ameen, the payment of the whole amount by plaintiff is not voluntary, and a suit for contribution is governed by Act XI of 1838.—8 W. R. 333.

19. S. 9 Reg. XIX of 1814 does not apply to lands made over under a —.—9 W. R. 145.

20. The division of a parent estate does not reduce a party, who did not hold as a ryot, to the position of a ryot not liable to ejectment.—*Ib.*

21. Under s. 19 Reg. XIX of 1793, the gross produce of each village of an estate must be calculated with the proportion of the public jumma assessed thereon.—*Ib.*

22. A — was decreed by the Civil Court which made provision in its decree for the payment of the expenses of — by certain co-sharers indicated. On proceedings taken before the Collector in pursuance of the decree, he called upon certain co-sharers (not those ordered by the Civil Court to pay the expenses) to pay the expenses (Ameen's fees) remaining due; and on failure by such co-sharers to comply with this direction, the Collector put up their share for sale as for an arrear of Government revenue. The co-sharers whose share was sold, without making an appeal to the Commissioner of Revenue under s. 33 Act XI of 1859, brought a suit to set aside the sale and to recover the property, alleging that there was nothing due which was recoverable as an arrear of Government revenue, and that the provisions of the Act did not apply. *Held* that the suit would lie and was cognizable by the Civil Court.—(F. B.) 10 W. R. F. B. 66. *See* 13 W. R. 381.

23. S. 20 Reg. XIX of 1814 is not applicable to a case where no partition has been made and plaintiff is not a co-sharer.—12 W. R. 134.

24. Where, on a separation of shares under s. 11 Act XI of 1859, one share remained which was sold for arrears of revenue, and one village of it was sold by the purchaser W to P, who, agreeing to a certain sum as his share of Government jumma, applied to the Collector to open a separate account at the rate agreed upon,—*Held* that there was no legal objection to P's having his separate share opened at the rate mentioned, even if the jumma on the share remaining in W's possession were excessive.—12 W. R. 243.

25. The Collector's notice to the shareholders of a property in a — case under Act XI of 1838, to pay their respective quota of expenses, is not sufficient to constitute such a demand as will render defaulters liable, even if his report is subsequently adopted by the Commissioner.—13 W. R. 381.

26. Before the remuneration of an Ameen employed to effect a — can be levied from the parties concerned in like manner as an arrear of revenue, it must be sanctioned by the Board and Government, and the periods and proportions in which it is to be levied must be determined by the Board.—*Ib.*

27. Where two or more proprietors of a joint estate apply to have it divided in the same proportions, and no other sharers oppose, the Collector may at once, under s. 4 Reg. XIX of 1814, proceed with the —; and if no objection is raised when the parties have opportunity, the shares cannot again be re-united by a Civil suit. If the Collector has notice of a dispute, his jurisdiction is questionable. In every suit to do away with the —, he must be made a party.—13 W. R. 471.

28. When in the preparation of a — under Reg. XIX of 1814 it is ascertained that the parties are at variance on a question of title, the Collector's proper course is to stay proceedings until all such questions are decided by a competent Court, the Revenue authorities not having authority under the law to decide them finally.—14 W. R. 335.

29. A Collector's — proceedings do not preclude parties from coming into Court for enforcement of their civil right.—15 W. R. 291, 471; 16 W. R. 190, 271.

And are a sufficient cause of action.—16 W. R. 190.

30. — proceedings conducted with the assent of guardians do not bind a minor unless it is found that the guardians acted *bonâ fide* and with a due regard to the interests of the minor.—17 W. R. 217.

31. *Khas* possession of any portion of a joint and undivided property cannot be had without a —.—17 W. R. 387.

32. In every case of a —, it does not follow that each party will have awarded to him the same quantity of land, or that the land to be awarded to each party should be in

PARTITION (BUTWARRA) (*continued*).

exact proportion to the amount of revenue paid.—18 W. R. 461.

33. S. 3 Reg. XIX of 1814 applies only where revenue is payable to Government, which must be apportioned when a division of the estate is made but not where the revenue is already apportioned by each of the owners. A suit for partition in such a case may be entertained by the Civil Court.—20 W. R. 182.

34. One of the co-sharers of a joint estate, suing conjointly with the others, would, under Reg. XIX of 1814, be entitled to a separation of a mouzah from the rest of the zemindaree, and an assessment upon it of a proper proportion of the total jumma; and having done this, he would alone be entitled to have an order for — of that mouzah as between himself and his co-sharers therein.—21 W. R. 225.

35. When the zemindaree is so mixed up with the neighbouring zemindarees that the line of boundary cannot be identified, the plaintiff cannot call upon the Collector to make a new line; but if the Collector has the means of ascertaining where the boundary lies, he is bound to carry out a —.—*Ib.*

36. The Civil Court has no authority to order the Collector to make a — of the jummas payable to Government in respect of mehals which are intermixed in a portion common to all.—21 W. R. 272.

37. In a suit by a shareholder of a joint estate, to establish a right to a —, the Collector need not be made a party unless the public revenue is jeopardised by the contemplated —.— 22 W. R. 245.

38. Principle adopted where the — of an estate under Reg. XIX of 1814 was supplemented by an assignment of land by defendants in exchange for land originally held by plaintiff.—22 W. R. 453.

See Abatement 5.
Auction-Purchaser (Revenue Sale) 21.
Boundary 16.
Contribution 10.
Co-sharers 1, 2, 3, 10, 12, 30, 40, 48, 53.
Declaratory Decree 48, 50.
Enhancement 53, 78, 268.
Evidence (Documentary) 35, 64, 111.
Intervenor 28, 66.
Julkur 14.
Jurisdiction 329, 146, 483, 489, 490, 509.
Limitation 109, 204, 241.
,, (Act XIII of 1848) 1.
Mokurruree Tenure 22.
Mortgage 236, 272, 273.
Onus Probandi 223, 232.
Partition 12, 19.
Pre-emption 5(
Receipt 5.
Res Judicata 7o.
Sale Law (Act XI of 1859) 27.
Water 23.

Partnership.

1. Plaintiff sued the members of a banking firm jointly for payment of certain deposits in their hands. Defendants pleaded that, by an arbitration award passed between them after they had quarrelled with each other, one of the partners was to be liable. *Held* that plaintiff was not in any way bound by the award, which affected the partners only in their respective rights towards each other.—1 Hay 481.

2. Where parties dissolve — without giving notice to customers having current accounts with them, they are liable for payments made to one partner in the belief that he represents the firm.—W. R. Sp. 94.

3. Duty of Sudder Court under s. 16 Reg. VI of 1793 to have used the evidence supplied by certain original account-books, or to have ascertained that the sum mentioned as the balance due on a — account subject to certain objections, was a balance due without objection.—(P. C.) 5 W. R., P. C., 76 (P. C. R. 12).

4. A contract was entered into at Rutlam for the establishment of a — to be carried on principally at Muttra. *Held* that the cause of action in a suit for the balance resulting from the — transactions arose at Muttra.—(P. C.) 1 W. R., P. C., 35 (P. C. R. 425).

5. Service of a summons intended for one partner upon another partner of the same firm is not a sufficient service. Partners are not the recognized agents of each other within the meaning of cl. 2 s. 17 Act VIII.—1 Hyde 97.

6. In a suit for money advanced and for half profits upon an alleged —, the plaintiff (although his claim to half-profits failed or was abandoned) was held entitled to a decree for the balance of the advance still due to him.—1 W. R. 300.

7. Liability of mercantile firm for frauds committed by one of its members or its agents while acting for it or in its business.—2 W. R. 186.

8. Nature and extent of evidence required when dissolution of — is pleaded in a suit for shares of assets and property of a trading firm.—3 W. R. 223.

9. The doctrine of liability of a dormant partner for every debt incurred by the active partner is not absolute in Courts in England, and is not to be followed except when consonant with justice, equity, and good conscience—9 W. R. 355.

10. Where plaintiff entering into a contract of — to work certain mines, receives a *bonus* and six monthly payments as "rent" for the land, stipulating to refund in case coal should not be discovered, it is a — arrangement and the money is consideration-money.—9 W. R. 499.

11. An agreement of — for carrying on business under contract with the Public Works Department, by an Overseer in that Department, who by the rules of his office is prohibited from entering into any trade or contracts with the Department, is a fraud upon the public and not valid. —11 W. R. 441.

12. Participation in profits does not of itself constitute —.—12 W. R. 56, (*affirmed by P. C.*) 18 W. R. 384.

13. Every one of the partners in a mercantile firm whether his name appear on the face of the instrument or not, and whether he be a sleeping and secret partner, is liable upon a bill drawn up by a partner in the recognized trading name of the firm for a transaction incident to the business of the firm, unless it be shown that the holder of the bill knew, at the time he received it, that the transaction was the private affair of a single partner.—(P. C.) 13 W. R., P. C., 29.

14. Proof may be given of a — in which there are dormant partners.—14 W. R. 23.

15. Procedure necessary to obtain a dissolution of — and discharge from liability in respect thereof.—14 W. R. 47.

16. In a suit to recover money on an adjusted — account between plaintiff and defendant, where the plaintiff allowed the issues to be framed, not *mainly* but *solely* on the alleged adjustment and failed to prove that adjustment.—*Held* that the plaintiff was not entitled to go into the question of general account with his late partner.—15 W. R. 24

17. In a suit for dissolution of —, there should be no absolute decree for a specific sum of outstanding balances; and no amount should be decreed without proof of its having been realized and misappropriated.—15 W. R. 352.

18. A member of a subsisting — cannot sue his partner for profits which had accrued up to a particular time, but must sue for an account.—16 W. R. 141.

19. A person paying to one member of a — a debt jointly due to all the members, is bound to show that he is acting *bonâ fide* on the understanding that it is for the benefit of the —.—16 W. R. 223.

20. To constitute a —, the parties must have agreed to carry on business and to share profits in some way in common.—(P. C.) 18 W. R. 384.

21. The relation of principal and agent ought not to be implied, any more than that of —, from the fact of a commission on profits and powers of control being given, when such relation is opposed to the real agreement and intention of the parties.—(P. C.) *Ib.*

22. If a civil action by one or more members of a defunct — against another member for contribution to

PARTNERSHIP (*continued*).

recover money paid in liquidation of a debt due by the firm, if there has been no adjustment of accounts, it is necessary to make all the partners parties to the suit.—18 W. R. 408.

23. A managing partner of a tea-garden was held, so far as third parties were concerned and in the absence of notice to the contrary, to have power to bind his partners in matters incidental to carrying on the business in the usual way.—(O. J.) 21 W. R. 161.

24. In a suit against co-partners in a joint firm to recover money deposited as plaintiff's share and to have accounts rendered of the profits, before any order can be made declaring plaintiff entitled to be paid by any one of his partners or out of the assets of the firm the actual money advanced, the whole accounts of the firm should be taken and the ultimate liability of each of the partners ascertained.—21 W. R. 300.

25. The partners of a concern are bound by the acknowledgments of their manager as their avowed agent. —24 W. R. 34.

26. A bond executed by the managing partner in a firm, within the scope of a manager's authority to raise money for the joint purpose of the firm, is binding on the other partners.—24 W. R. 60.

27. Where A advanced money to others to carry on business, and an instrument was executed whereby the latter agreed and bound themselves to account yearly to the former for a share of the profits,—*Held* that the transaction amounted to an agreement that A should be a party to the business *pro tanto*, and that, by cl. 10 s. 253 Act IX of 1872, the — between A and the others was dissolved by the death of A, and that A's representatives, by receiving, some 6 months after his death, an account with a portion of the money advanced and of the profits, did not re-constitute —, but rather indicated an opposite intention.—25 W. R. 49.

28. A firm becomes dissolved when the original proprietors die; and if somebody comes in their place and carries on the business of the firm, the business, whether carried on under the old name or not, is not that of the old firm, but of an entirely new firm.—25 W. R. 118.

29. Where a firm had purchased a moiety in a tea-estate and engaged to pay all its working expenses on the condition that the purchase-money should be a charge on the estate and be repaid from its produce before any profits were declared, and that the working expenses should be repayable in the same manner as the purchase-money of the moiety,—*Held* that the firm had a charge upon the original owner's moiety in priority to a subsequent mortgage in respect of it, and should be allowed to take over such moiety at the market-value of the estate at the death of such owner.—(O. J.) 25 W. R. 243.

30. Where, by a contract of —, one of the partners was to manage the business, and his remuneration was not to be by salary, but by a commission upon sales during his lifetime; and on its being found that the concern could, not go on except at a loss, and the Company had to be wound up by an order of Court,—the Privy Council, acting upon the distinction between the position of a man who is to be paid by a fixed salary and that of a man who is to be paid by commission, and upon a careful construction of the whole agreement, came to the conclusion that, by no fair and reasonable implication could it be inferred that the partners relinquished their right of dissolving or applying to have the Company dissolved under the circumstances, or that they agreed, if they did exercise this right, to pay the managing partner compensation for the loss of commission not earned.—(P. C.) 26 W. R. 78.

See Bond 16.
Certificate 23.
Criminal Breach of Trust 3.
Evidence (Documentary) 78.
Fraudulent Removal or Concealment 3.
Hindoo Law (Coparcenary) 12, 82, 100, 101.
Husband and Wife 17.
Jurisdiction 14, 392.
Limitation (Act XIV of 1859) 128, 148, 302.
Limitation (Act IX of 1871) 36.
Mortgage 81.
Plaint 10.
Practice (Amendment) 23.
Res Judicata 46.
Separation 2.
Small Cause Court 5.

Party to Suit.

See Defect of Parties.
Joinder of Parties.
Practice (Parties).

Pauper Suit or Appeal.

1. Mode of computing limitation in a pauper suit.—W. R. F. B. 53 (1 Hay 378, Marshall 174), 13 W. R. 371.

2. There is no necessity for an enquiry whether an alleged representative of a pauper is a pauper or not; but the Court, if satisfied that he is the legal representative, ought to admit him to carry on the suit under s. 102 Act VIII.—3 W. R., Mis., 20.

3. Where the grounds stated in s. 304 Act VIII appear, the Court is bound to refuse an application to sue as a pauper; but if the Court should not see reason to refuse, and should fix a day for hearing evidence on the question of pauperism, and if, upon such further hearing, the opposite party should bring to notice any ground upon which the Court would have been bound under s. 304 to refuse the application, it will be at the discretion of the Court, upon being so informed, to refuse leave. The words "within the jurisdiction of the Court" in s. 304 mean within the local jurisdiction.—14 W. R. 281.

4. Where a judgment-creditor whose sale in execution had been set aside was held to have a good ground to appeal *in formâ pauperis*.—14 W. R. 415.

5. An Appellate Court has no power, under s. 370 Act VIII, to demand security for costs from the petitioner after his appeal had been admitted; the provision in s. 342 not being applicable to appeals *in formâ pauperis*.—17 W. R. 68.

6. Where the appellant was, according to his own statement, a pauper, and it appeared that others presumably able to furnish security for costs were interested in the matter, the case was considered a proper one in which security should be given.—18 W. R. 102.

7. The Court rejected a petition of appeal presented on behalf of a pauper by a vakeel who was retained under an ordinary retainer but was not duly authorized to sign as attorney for the appellant. —21 W. R. 308.

8. A Subordinate Judge is bound by ss. 303 and 304 Act VIII, in deciding the question of limitation, to proceed upon the examination of the petitioner and upon that only. —25 W. R. 74.

9. Where a guardian obtains permission to sue *in formâ pauperis* on behalf of a minor, the rejection of the suit supplies no ground for throwing the costs of the suit on the guardian.—25 W. R. 316.

See Dower 37.
High Court 60, 172.
Jurisdiction 486.
Practice (Review) 71, 72.
Privy Council 7, 44.
Rules of Practice 21.
Stamp Duty 1, 35, 41, 52, 65, 66.

Pawning.

See Pledges and Pawns.

Payment.

1. The Court will not press hardly upon a defendant who tenders a reasonably substantially —.—2 Hyde 249.

2. Where a tenant has paid rent to two proprietors jointly, — to one is a sufficient defence in a suit by the other, unless he has had notice of separation.—3 R. J. P. J. 137.

PAYMENT (*continued*).

3. A — made without specification of account, may be applied to the — of any debt between the parties.—3 R. J. P. J. 162, 5 W. R. 45.

4. A — by a tenant under the landlord's directions to another or for a specified purpose, is tantamount to a — to the landlord himself and is a sufficient answer to the landlord's suit for rent.—W. R. Sp. (Act X) 112 (3 R. J. P. J. 101). *See* 10 W. R. 495.

Similarly a — of Government revenue by the tenant must be treated as a — on account of rent.—15 W. R. 545.

5. A — of rent to one of several joint proprietors is a — to all.—2 W. R. (Act X) 15, 7 W. R. 493.

6. According to the practice in India, the recital in a deed of the — of consideration is not conclusive evidence of such —.—(P. C.) 6 W. R., P. C., 55 (P. C. R. 161); 10 W. R. 208; 11 W. R. 265; 12 W. R., P. C., 6; 12 W. R. F. B. 25.

7. Payment to wrong party.—*See* Jurisdiction 364.

8. Excess payment.—*See* Limitation (Act IX of 1871) 40; Practice (Execution of Decree) 186.

9. Actual sight of the passing of the money is not the only mode of proving — of the consideration for a bond.—17 W. R. 439.

10. An auction-purchaser, with notice of a — in advance, made by the tenant to the former proprietors, of rent due for a period subsequent to the date of purchase, is bound by such —.—18 W. R. 328.

11. Although, when a deed of sale containing an acknowledgment of — is written, — is not made, it may become an acknowledgment afterwards, *i.e.* when the deed is handed over.—(P. C.) 19 W. R. 149.

12. Part payment.—*See* Limitation (Act IX of 1871) 23.

See Account 1.
Adjustment 10, 11, 14.
Admission 1, 2, 6.
Benamee 1.
Bond 16*a*.
Cesses 8.
Contribution 9.
Costs 5.
Damages 97.
Debtor and Creditor 1, 3, 4.
Declaratory Decree 19.
Deed 5.
Deed of Sale 6.
Ejectment 9, 11, 12, 17, 42, 49, 51, 66, 74.
Enhancement 11, 16, 17, 43, 46, 47, 56, 69, 73, 92, 95, 96, 138.
Evidence 82.
,, (Documentary) 125, 126.
,, (Estoppel) 3, 55, 63.
,, (Oral) 23, 28.
Hindoo Law (Coparcenary) 29.
Indigo 9.
Insolvency 15.
Instalments 9, 11, 12, 18, 19, 20, 21, 22, 24.
Interest 13, 18, 114.
Jurisdiction 364, 499.
Landlord and Tenant 20, 23, 33, 34, 48.
Lease 78.
Legacy 2.
Limitation 79.
,, (Act X of 1859) 30, 38.
,, (Act XIV of 1859) 3, 6, 13, 96, 184, 245, 246.
,, (Act IX of 1871) 22, 23, 32, 34, 40.
Money Decree 23.
Mortgage 168, 182, 233, 244, 251, 277, 293.
Occupancy 73.
Onus Probandi 40, 60, 94, 99, 147, 178, 188, 235, 266, 274.

See Partnership 19.
Pension 1.
Practice (Execution of Decree) 142, 156, 230, 248, 269.
,, (Possession) 41.
Principal and Agent 40, 62.
Purchase-Money 3, 4.
Putnee Talook 6, 56, 89, 105, 111.
Registration 36, 63, 98, 107, 132.
Rent 2, 12, 23, 24, 30, 39, 44, 45, 46, 49, 74, 77, 94, 103.
Sale 23, 124, 139.
,, Law (Act XI of 1859) 32.
Under Tenures 7.
Vendor and Purchaser 4, 12.
Voluntary Payment.

Payment into Court.

1. A — to satisfy a decree may be made by any person; the Court need not enquire whether it is made under the authority of the proprietor of the estate against whom the decree is about to be executed, or his heirs.—12 W. R. 505.

2. A judgment-debtor making — under pressure of process of arrest, and making at the same time but one objection, is not debarred from making any other objections previous to payment to decree-holder — under such pressure in no way affecting the rights of parties.—13 W. R. 29.

See Deposit 6.
Ejectment 88.
Endowment 78.
Hindoo Widow 81.
Insolvency 7.
Interest 71.
Jurisdiction 359.
Mortgage 1, 27, 40, 56, 64, 86, 138, 139, 140, 157, 158, 186, 253, 274, 291.
Practice (Attachment) 2.
Practice (Execution of Decree) 230, 240.
Putnee Talook 30, 56.
Receiver 6.
Sale 80, 139, 193.
,, Law 17.
Specific Performance 9.
Tender 1.
Voluntary Payment 8, 9.

Pedigree.

The question of the infancy of the plaintiff cannot, in a suit to cancel a deed of sale executed by him during his minority, be deemed a question of —.—2 Hay 97.

See Evidence 4, 5.

Pegu.

See Minor 17.

Penal Code.

See Act XLV of 1860.
Act XXVII of 1870.

Pension.

In consideration of the services of Rajah Anwar Shahad, the Delhi Emperor built a tomb over his remains and made a grant of land to his family for the purpose of maintaining it in the manner usual amongst Mahomedans. The land afterwards came into the possession of the local zemindar (the Rajah of Burdwan), who paid to the grantees a certain yearly sum, which was continued to be paid by the British

PENSION (*continued*).

Government from the time of the Permanent Settlement up to 1873, when, in consequence of disputes in the family, Government reduced the money payment and appointed a Mutwalee for the tomb. One of the descendants of Anwar Shahad now sued Government and the Mutwalee for a share of this annual payment. *Held* that the grant to the family was not a gratuitous — or allowance; that the money payment by the zemindar was rent justly due to them for the use and occupation of their land; and that the fact of the payment being continued by Government did not alter its nature so as to prevent the Civil Court from taking cognizance of the suit under Act XXIII of 1871.—23 W. R. 378.

See **Mysore 1.**
Practice (Attachment) 58.
Trust 5.

Peons.

By Act V of 1863 (B. C.) the appointment of — in the Civil Court is vested in the Nazir subject to the approval of the Judge; and no superior authority is competent to control such appointments or to restrict the choice of the Nazir.—9 W. R. 333, 11 W. R. 159.

See **Evidence 84.**
Nazir 6.
Service 2.

Perjury.

Procedure in a case of — committed before a Civil Court before 1st January 1862, with reference to s. 4 Act XVII of 1862.—5 W. R., Cr., 8.

See Evidence (Corroborative)
False Evidence.

Permanent Settlement.

1. The date of the — held to be the 22nd March 1793.—W. R. Sp. (Act X) 61 (2 R. J. P. J. 267), 4 W. R. (Act X) 41.

2. "The date of the —" mentioned in ss. 3 and 4 Act X of 1859 was the date of the — of Bengal, Behar, and Orissa, referred to in Reg. I of 1793, and not the date of settlement of a particular zemindaree with its owner. — W. R. Sp. (Act X) 71, 3 W. R. (Act X) 20.

It is not necessary in a suit under Act X to prove that the land to which the suit relates has been the subject of a —. —16 W. R. 289.

Quære. When the — took place in Cuttack.—*Ib.*

3. The date of the — for the district of Jessore was the 11th April 1790.—1 W. R. 230.

See **Family Custom 5.**
Julkur 22.
Zemindar 5.

Perpetuity.

See **Co-sharers 62.**
Covenant 1.
Ejectment 109, 111.
Endowment 67.
Enhancement 82, 128, 257.
Evidence (Estoppel) 51.
Ghatwals 1, 13, 15, 16, 17, 29.
Guardian 11.
Jurisdiction 114, 167, 334.
Kubooleut 56.
Lease 6, 7, 21, 28.
Maintenance 12.
Meeras Pottah.
Mokurruree Tenure.
Mourosee 1.
Occupancy 79.

See **Pre-emption 88.**
Summary Award for Rent 5.
Trees 4.
Trust 5.

Personal Appearance.

1. The Court will extend the privilege of Purdah to women who, though not Purdah, are not accustomed generally to appear before the public.—2 Hyde 88.

2. Exemption of Hindoo ladies from — as witnesses.—3 W. R., Cr., 46; 24 W. R. 375.

3. Exemption of Mahomedan ladies of position from —. —15 W. R. 129.

See **Principal and Agent 8.**
Purdah Women 4.

Personal Property.

See **Moveable Property.**

Pesh-cush.

See Quit-rent.
Trees 6.

Peshkar.

See Sale 18.

Phulkur.

Nature of — rights. — (P. C.) 3 W. R., P. C., 19 (P. C. R. 578).

See Churs 79.
Jurisdiction 501.

Pilgrims.

Compensation in lieu of Pilgrim tax at Gya. Government system of accounts not to prejudice private rights of parties.—(P. C.) 5 W. R., P. C., 14 (P. C. R. 605).

Pilots.

The Government may prohibit its — from allowing any vessels under their pilotage charge to be taken in tow of a steamer, the owners of which will only render their services on exorbitant terms.—(P. C.) 2 W. R., P. C., 51 (P. C. R. 413).

See Arrest 1.

Plaint.

1. When omission in — is not fraud.—W. R. F. B. 23 (1 Hay 235, Marshall 72).

2. Plaintiff not punishable for false verification of — by his agent.—*Ib.*

3. Where the verification of a — was held not false within the meaning of s. 24 Act VIII of 1859.—W. R. F. B. 41 (1 Hay 269, Marshall 127).

4. If — asks for relief which Court can afford, and also seeks to open up matters not adjudicated upon in another suit, Court (instead of rejecting the — as prolix under s. 29) should entertain the suit and adjudicate upon matters not adjudicated upon.—*Ib.*

5. Verification of — to be by plaintiff only save under the exceptions allowed by s. 28 and which must be separately pleaded and considered in each case.—W. R. F. B. 54 (1 Hay 379; Marshall 176); 5 W. R., Mis., 33; 6 W. R. 213; 7 W. R. 168; 24 W. R. 215.

But after — has been admitted, the suit should not be dismissed on the ground that the — should have been verified by plaintiff himself and not an agent, but Judge should, under s. 29 Act VIII, require the verification by plaintiff to be supplied.—2 Hay 327 (Marshall 344).

6. Where a Court has not jurisdiction, the — should be returned for presentation to the proper Court, and an appeal

PLAINT (*continued*).

from such an order is not an appeal contemplated by s. 348.—W. R. F. B. 86 (2 Hay 243).

7. Not to be construed literally but according to the meaning of the plaintiff. Thus, where a — charged defendant with plundering an orange grove, the suit was held sufficiently maintainable though actual "plundering" was not proved.—W. R. F. B. 159. *See also* 21 W. R. 59.

8. When a new — is necessary on the grant of a new trial in a Small Cause Court.—S. C. C. 35.

9. Presentation of — at Small Cause Court's Clerk's private residence after Court hours owing to difficulty in procuring stamps earlier.—S. C. C. 36.

10. Under s. 26 Act VIII a — by a firm should set forth the names of all the members of the firm; otherwise it may be either rejected or returned for amendment.—S. C. C. 38. *See also* 25 W. R. 108.

The omission of the principal partner and debtor from amongst the parties sued is fatal to a suit brought against the firm.—25 W. R. 203.

11. A Small Cause Court is not tied down to the strict form of a —.—S. C. C. 94.

12. A — wanting in precision, or defective in form, should be returned for amendment and not rejected.—W. R. Sp. 50. *See* 8 W. R. 295.

13. A — should be entered in the register under date of presentation although not registered on that date.—W. R. Sp. 81.

14. If a — valued at 1000Rs. is registered by mistake in a Judge's Court, it would be rightly dismissed for want of jurisdiction; but instead of being registered, it should be returned to the plaintiff.—W. R. Sp. 162.

15. A — should state the mode in which plaintiff's claim arose as well as the amount of the claim. Thus, where a case was decided as one of enhancement between landlord and tenant, plaintiff cannot be allowed in appeal to rest upon his alleged stipulation in a farming lease, the existence of which he suppressed in the Court below, reserving to him the right of collecting an enhanced rent.—W. R. Sp. (Act X) 34.

16. Error in — does not bar relief really sought.—(P. C.) 5 W. R., P. C., 47 (P. C. R. 621).

17. A plaintiff must, on the presentation of his —, produce in Court the originals of the documents on which he relies in support of his claim.—1 Hyde 288.

18. When a plaintiff can satisfy the Court at the hearing that some document on which he desires to rely was not presented with the — because he was ignorant of its existence at the time, the Court will probably allow it to be received as evidence.—*Ib.*

19. An erasure in a — is no ground for dismissing the suit.—1 W. R. 87.

20. A Judge has no authority to allow a plaintiff to file a supplemental — after the Ameen's report has been given in.—1 W. R. 278.

21. Variance in — does not involve dismissal under Act VIII.—1 W. R. 300.

22. A suit instituted within time is not prejudiced by delay in registration of —.—3 W. R. 1, 1 W. R. 159.

23. Upon the presentation of a —, a Judge should cause the date of presentation to be noted on the petition.—3 W. R., Mis., 29.

24. A — returned as not duly verified, is out of time if not presented or registered until more than 6 months after the expiration of the period of limitation.—4 W. R. 81.

25. A — that is bad on the face of it ought not to be admitted; nor ought it to be amended after the issues have been fixed.—5 W. R. 234.

26. A deposition by one of the plaintiffs does not cure the defect of non-verification of the — by all the plaintiffs.—6 W. R. (Act X) 6.

27. Where a suit is, by a Collector's order, instituted at the Sudder Station instead of at the Sub-Division Deputy Collector's office, the — may be returned to plaintiff to be filed in the proper quarter.—6 W. R. (Act X) 104.

28. When an application is made to a Court to permit a — to be subscribed and verified by a person other than the plaintiff, the Court must make the enquiries pointed out by s. 28 Act VIII.—6 W. R., Mis., 59.

29. A — in Persian should be rejected or returned for presentation in the ordinary language of the district.—8 W. R. 495.

29*a*. Where, on the face of the —, no relevant case was made against the defendants, but it appeared that in a suit properly framed, if he proved his case, plaintiff would be entitled to a decree against one, and it was probable that a new suit would be found barred by limitation, the plaintiff was allowed to amend his — so as to make it a — against that one defendant alone.—(P. C.) 9 W. R., P. C., 9. *See also* (O. J.) 18 W. R. 424, 25 W. R. 425.

30. Deficiencies in — do not justify the dismissal of a suit.—10 W. R. 460.

31. In a suit to recover possession, the — ought to state as accurately as possible the date on which the plaintiff was dispossessed.—11 W. R. 238.

32. Where a — does not sufficiently disclose the cause of action, the proper course is not to dismiss the suit altogether, but to reject and return the — to plaintiff, or more properly to allow it to be amended under s. 32 Act VIII. Where this was not done, plaintiff was held at liberty to prove any cause of action not inconsistent with the —.—12 W. R. 313. *See* 14 W. R. 181.

33. The object of s. 26 Act VIII is to identify the parties to the suit, and the term "description" applies rather to the patronymic than to a title such as *Roy Bahadoor.*—12 W. R. 450. (*Over-ruled by P. C.*) *See* 40 *post.*

34. The verification of a — by an agent, instead of the plaintiff himself, cannot be objected to by a Judge of a Small Cause Court, after such verification has been expressly sanctioned by him at the commencement of the suit.—12 W. R. 465.

35. A — must state the relief sought for, the subject of the claim, the cause of action, and when it accrued; and in suits for damages for injury done, the nature of the injury ought to be set out.—13 W. R. 248.

36. When a — is rejected under s. 32 Act VIII, the plaintiff can bring a suit on the same subject-matter, provided he is not barred by lapse of time.—14 W. R. 289.

37. An ambiguous — is bad in form, a plaintiff claiming under two several rights being bound to state the fact distinctly.—15 W. R. 225.

38. Where plaintiff was ordered by the Lower Appellate Court to file a new — within 3 months and was entitled to and did actually go up in special appeal, the period was rightly construed to be within 3 months of the final decree.—17 W. R. 183.

39. A Nazir of a Small Cause Court is not authorized to receive a —.—18 W. R. 172.

40. The description in a — contemplated by s. 26 Act VIII includes all those titles by which a party is known; and if a plaintiff from animosity, or anything but a *bonâ fide* dispute as to the right to a title, refuses to give his adversary that title by which he is generally recognized, the Court will exercise a sound discretion under s. 29 in first requiring the plaintiff to amend his —, and afterwards in rejecting the — if its order is contumaciously disobeyed.—(P. C.) 18 W. R. 301.

41. Under s. 26 Act VIII a — need not set forth boundaries, but should only describe the property sued for in such a manner as may suffice for identification.—18 W. R. 461. *See also* 20 W. R. 142, 25 W. R. 425.

42. Where plaintiff claimed several plots of land but did not specify the boundaries in respect of one of them,—*Held* that the proper course was for the Court to call upon plaintiff to amend his —.—21 W. R. 187.

43. Where a Judge, after registering a — and allowing the parties to go to issue on the question of jurisdiction, found that he had no jurisdiction, he ought, instead of dismissing the suit, to have returned the — to plaintiff under s. 3 Act XXIII of 1861.—23 W. R. 263.

See Account 5.
Appeal 16, 91.
Arbitration 95.
Cause of Action 4, 13, 14, 26.
Contribution 18.
Declaratory Decree 54.
Decree 21.
Defect of Parties.
Dismissal of Suit or Appeal 7, 10, 24.
Endowment 70.
Enhancement 250.

PLAINT (*continued*).

See Evidence (Documentary) 22, 77.
„ (Estoppel) 16.
Hindoo Widow 119.
Irregularity 22.
Joinder of Parties 19.
Jurisdiction 81, 78, 249.
Kubooleut 51.
Limitation 24, 38, 65, 147.
„ (Act XIV of 1859) 77.
Lunatic 1.
Manager 14.
Miscellaneous Appeal 1, 5.
Mortgage 193.
Practice (Amendment) 3, 4, 7, 10, 14, 16, 19, 20, 23, 26, 27, 29, 30.
„ (Appeal) 37, 81, 96.
„ (Parties) 23.
„ (Possession) 19, 39, 80.
„ (Suit) 18, 32, 34, 35, 38, 41, 57, 63.
Promissory Note 4.
Rent 97.
Representative 7.
Stamp Duty 3, 68, 73.
Title 20.
Value of Suit or Appeal 3, 6.
Written Statement 9.

Pleader.

1. A — of the Calcutta Small Cause Court cannot plead in the Mofussil Small Cause Courts.—S. C. C. 55.

2. Where a — is made a witness, weight should be given to his evidence as a witness and not as a — instructed or permitted to make admissions. Sev. 88.

3. Where an appellant's — was temporarily removed,—*Held* that the Judge should have given the appellant reasonable time to engage another —.—Sev. 765.

4. A — may be appointed an arbitrator.—Sev. 867.

5. The dismissal of a —, notwithstanding his honorable acquittal, was held to be illegal and contrary to Act XVIII of 1852 and to all principles of justice and equity.—W. R. Sp., Mis., 22.

6. Delay in instructions to — will not justify postponement of a case.—2 W. R. 284.

7. A — is bound to move for an order as soon as return is made.—2 W. R., Mis., 51.

8. Absence of — is no ground for postponing a case.—3 W. R. 38.

9. Pleaders' Rules.—*See* Rules of Practice 5, 7, 10, 15, 25, 27, 29, 37, 37*a*, 39, 42.

10. A Judge may refuse to hear a — for misconduct; but, instead of dismissing the case, he ought to dispose of it on its merits.—6 W. R. 67.

11. S. 7 Act I of 1846 does not apply to claims by — against client.—6 W. R. 108.

12. A — employed by several defendants in the same interest, is not entitled to a full fee from each, but only to a reasonable remuneration.—*Ib.*

13. Under a charge against several defendants for having jointly misappropriated property, each defendant has a right to defend himself by separate counsel and is entitled to separate costs if successful.—6 W. R. 324.

14. A Zillah Judge has no power, after 1st January 1866, to make an order under Act XVIII of 1852 dismissing a —; but should proceed under s. 16 Act XX of 1865, and refer the matter with his report to the High Court. Even under Act XVIII a — was liable to dismissal only on proof of conviction of a criminal offence or breach of trust, etc.—6 W. R., Mis., 5.

15. The slight analogy that exists between an English barrister and a Mofussil —.—6 W. R., Mis., 53.

16. Pleaders' Fees Rules. *See* Rules of Practice.

17. The vakeels of the High Court are entitled to be heard in the Calcutta Small Cause Court.—7 W. R. 228.

18. Any charge of misconduct against a — or mookhtar holding a certificate under Act XX of 1865, other than a recorded conviction of a criminal offence, must be made and substantiated, and a report submitted to the High Court as provided by s. 16.—7 W. R. 316.

19. Where one — for an appellant states his inability to go on with the appeal, the Judge may dismiss it without sending for any other —.—7 W. R. 336.

20. Not merely authorized mookhtars, but other persons generally, may appoint a — by vakalutnamah.—7 W. R. 481.

21. A — appearing in a regular appeal before the High Court is, under s. 18 Act VIII, competent, under his vakalutnamah unless revoked, to appear in reviews and in the appeal to the Privy Council.—8 W. R. 92.

22. The pleaders of the Mofussil Courts are not entitled, as such, to practise in the Calcutta Small Cause Court.—10 W. R. 82.

23. A Zillah Judge has no power to oblige a — to leave a Court in which he has been practising and to proceed to another.—10 W. R. 332.

24. A Zillah Judge has no power to initiate proceedings against a — of the lower grade; under s. 16 Act XX of 1865, the enquiry should be made by the Court in which the — committed the act of misconduct.—11 W. R. 127.

25. A — cannot ordinarily relinquish any portion of his client's case without the latter's authority.—12 W. R. 279.

26. The senior — has entire control of a case in the High Court, and the junior — can take no ground of appeal which the senior — has not thought fit to argue, except with the permission of the Court obtained by the senior —.—12 W. R. 375.

27. In a case tried under s. 16 Act XX of 1865, where the Subordinate Court is of opinion that the — should be acquitted, there is no necessity for a report to the Judge.—13 W. R. 67.

28. When conduct is charged against any — of a Subordinate Court which, if proved, would amount to an offence, that conduct should be enquired into, not simply as improper conduct, but as an offence to be made the ground, if established, of his dismissal under s. 14 Act XX of 1865.—13 W. R. 456.

29. The acceptance of a vakalutnamah by a — of the High Court should in all cases be unconditional.—14 W. R. 7.

30. Where a party appealing to the High Court is himself a — of the Court, he cannot certify his own grounds of appeal.—14 W. R. 168.

31. A Zillah Judge has no power under Act XX of 1865 to suspend a — of the High Court from practising in the Courts of his district on the ground of incompetency, but should make a representation to the High Court.—14 W. R. 217.

32. A — may appear in criminal cases, not only on behalf of an accused person, but also on behalf of a private prosecutor.—14 W. R., Cr., 23.

33. Case where High Court refused to act on the recommendation of a Zillah Judge to strike a — off the rolls under s. 16 Act XX of 1865 for using improper language, and held that the Judge should have called the — to order and required him to apologize.—14 W. R., Cr., 53.

34. A — who has signed a memorandum of appeal and refuses to argue the case on the ground of being unable and unprepared, is liable to be either dealt with by the Court for neglect of duty or sued by the client for neglect of his interests.—15 W. R. 143.

35. It is improper for counsel to endeavour to influence a Court by reference to a course which the Appellate Court may adopt or to the view which it may take of its proceedings.—15 W. R. 173.

36. A — is not guilty of grossly improper conduct if he examines *copies* of the record, and not the original record, before he draws the grounds of appeal and certifies them.—17 W. R. 338.

37. In a case of an application to stay execution on the ground of compromise, the omission of a — to examine the record, or to verify the statements made to him by the parties, or to obtain the concurrence or authority of his senior, was held not to amount to grossly improper conduct within the meaning of Act XX of 1865.—17 W. R. 405.

38. *Quære.* Whether pleaders have a right to be heard in cases under s. 62 Act XXV of 1861.—17 W. R., Cr., 37.

39. In a suit by a — for the balance of his fees, where it was found that there was no contract,—*Held* that, in con-

PLEADER (*continued*).

sidering the proper fee to be allowed, the Lower Appellate Court had no other guide than what, according to the practice of the Court, was allowed as costs between party and party.—19 W. R. 105.

40. A suit is not saved from dismissal for default merely by the fact of the absence of the plaintiff's — being accounted for; in such a case the Court is not required to ask the defendant's — whether he admits the claim.—24 W. R. 141.

41. Where a — of a Lower Appellate Court, of his own motion, and without any instruction whatever, volunteered an improper imputation upon the conduct and character of the opposite party, the Judge was requested to send for the — in open Court and express to him the High Court's extreme disapproval of the course adopted by him —25 W. R. 366.

See Adjustment 8.
Appearance 1.
Arbitration 2, 10.
Attorney and Client 2, 7, 8, 9, 12, 13, 14, 15.
Benamee 18.
Costs 43, 52, 55, 71.
Decree 5.
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Evidence (Documentary) 65.
,, (Oral) 53.
Ex-parte Judgment or Decree 2, 30.
Forgery 25.
High Court 18, 94.
Limitation 158.
,, (Act XIV of 1859) 107.
Mookhtar 14, 21.
Notice 7.
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Practice (Appeal) 29, 53.
,, (Criminal Trials) 47.
,, (Motions) 1.
,, (Review) 63, 65, 68.
Principal and Agent 48.
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Sale 178.
Special Appeal 42.
Vakalutnamah.
Vendor and Purchaser 63.

Pledges and Pawns.

See Interpleader Suit 1.

Police.

1. A Magistrate has no power to realize the cost of a — constable from an individual.—1 W. R., Cr., 15.

2. Use of justifiable violence by — in capturing a thief.—2 W. R., Cr., 9 (1 R. J. P. J. 165).

3. When bribery by a — officer is punished by the Magistrate as a magisterial officer with fine under s. 161 Penal Code, and in his administrative capacity with dismissal, the two orders of fine and dismissal should not be treated as one sentence beyond the competency of the Magistrate to pass.—5 W. R., Cr., 4.

4. An enquiry by the — into complaints falling under Chap. XIV Act XXV of 1861, is not warranted by law, s. 180 not being one of the sections of Chap. XII which are made applicable to Chap. XIV by s. 249.—8 W. R., Cr., 11; 10 W. R., Cr., 49.

5. S. 79 Penal Code and cl. 5 s. 100 Act XXV of 1861 do not protect a — officer who does not act in good faith, *i.e.* with due care and attention.—10 W. R., Cr., 20.

6. A — officer negligently or improperly submitting an incorrect report of a local investigation, may be punished under s. 29 Act V of 1861 where the proof is insufficient to bring the case under s. 218 Penal Code.—15 W. R., Cr., 17.

7. A — officer, who has purchased a pony which had been impounded, is not guilty of criminal breach of trust, but should be proceeded against under s. 19 Act I of 1871 taken with s. 169 Penal Code.—16 W. R., Cr., 52.

8. Before a — officer can be convicted of an offence under s. 29 Act V of 1861, it must be found that he is guilty, not of mere neglect, but of deliberate and intentional violation of duty.—17 W. R., Cr., 34; 19 W. R., Cr., 7. *See* 25 W. R., Cr., 20.

9. Acts or omissions punishable under s. 29 Act V of 1861 come within the category of offences referred to in s. 8 and also s. 148 Act X of 1872.—25 W. R., Cr., 20.

See Abetment 2, 14.
Appeal 123.
Arrest 8.
Conviction 4.
Criminal Breach of Trust 1, 2.
,, Proceedings 17.
Defamation 14.
Detention 1, 2, 4.
Dismissal of Complaint 16.
Escape 3.
Evidence 37, 17, 58, 77, 79.
,, (Admissions and Statements) 14, 19, 44, 51, 54, 55.
,, (Corroborative) 5, 7.
,, (Documentary) 48.
,, (Oral) 31.
False Charge 4.
,, Evidence 13, 47.
High Court 137.
Illegal Gratification 3.
Information 6.
Jurisdiction 290, 479.
Land Dispute 47.
Notice 19.
Obstruction 5.
Public Servant 2, 3.
Recognizance 8.
Rescuing Prisoner 1.
Sale 54.
Service Tenure 12, 13.
Stolen Property 5.
Theft 3.
Torture 2.
Wrongful Confinement 3.
,, Restraint 1, 3.

Political.

See Foreign Territory.
Jurisdiction 128.
Pardon 1.

Polliam.

A — is not necessarily a hereditary tenure exempt from payment of revenue.—(P. C.) 21 W. R. 358.

Pollution.

According to Hindoo law, the period of — is 16 days.—(P. C.) 1 W. R., P. C., 25 (P. C. R. 538).

See Hindoo Law (Adoption) 25.

Port Canning.

See Interest 104.

Possession.

1. A person not in — cannot, without proof of title, turn another out of —. Mere production of a conveyance will not avail.—W. R. F. B. 20 (1 Hay 137, Marshall 75). *See also* 1 Hay 7; 5 W. R. 213, 218; 20 W. R. 197; 26 W. R. 100.

2. The mere fact that a joint jumma is payable to Government is not evidence of joint —.—2 Hay 81.

3. An appellant who intervened after the decision of the Lower Court was passed, alleging that he was in —, was left to apply to the Court executing the decree under s. 230 Act VIII of 1859, when his — was threatened in the execution stage.—Sev. 821.

4. Long — is *primâ facie* evidence of title.—(P. C.) 5 W. R., P. C., 69 (P. C. R. 4). *See also* 12 W. R. 315, 25 W. R. 317.

5. In India the title of — must prevail until a good title to the contrary is shown.—(P. C.) 6 W. R., P. C., 13 (P. C. R. 112). *See also* 7 W. R. 485, 10 W. R. 48, 11 W. R. 350, 26 W. R. 100. *But see* 11 W. R. 301.

5a. Adverse — for 12 years not only bars the remedy but also affects the right and confers a title on the opposite party.—(P.C.) 7 W. R., P. C., 21 (P. C. R. 676); 12 W. R. 192; 15 W. R. 80; 17 W. R. 119.

6. Maliks receiving malikhana cannot retain —.—1 W. R. 82.

7. — by zemindar is valid against alleged prescriptive right of occupancy by ryot.—1 W. R. 167.

8. The lawful owner of property of which he has been wrongfully dispossessed is entitled to recover it not only from the original wrong-doer but also from *bonâ fide* purchasers from the wrong-doer.—1 W. R. 255.

9. Fact of — was held to prove purchase by and title of possessor.—2 W. R. 41. *See also* 12 W. R. 217.

10. — must be presumed to be of right and adverse until that presumption is rebutted by evidence.—3 W. R. 12.

11. In a suit brought under s. 230 Act VIII, on plaintiff's — being proved, title should also be enquired into.—3 W. R. 213. *See also* 5 W. R. 224, 13 W. R. F. B. 80, 18 W. R. 395.

12. Evidence of — and enjoyment is good evidence of title only where undisputed and continuous.—6 W. R. 82.

12a. S. 246 Act VIII merely refers to —, and there is no reason why a litigant failing on the point of — should not afterwards bring a suit on title within the period allowed by law for bringing such a suit.—8 W. R. 73. *But see* 22 W. R. 39.

13. *Quære.* Whether hunting elephants, cutting wood, levying cesses, and exacting services in the Garrow Hills for more than 60 years, are acts of mere easement or acts of — by the zemindar.—8 W. R. 343. *See* 9 W. R. 426.

14. The question of — is a mixed one of law and fact; and the evidence produced must give the various kinds of ownership which go to constitute —, so that the Court may arrive at its own conclusion. A mere statement of a witness that a party "is in —" is no evidence of the fact.—9 W. R. 79. (*Over-ruled by F. B.*) 13 W. R. F. B. 42.

15. Where the record of an Act IV case had been filed as evidence of —, it was held to be no error of law on the part of the Lower Appellate Court not specifically to mention and dwell upon the fact of — contained in that record.—9 W. R. 120.

16. — need not be long in order to be some evidence of title.—*Ib. See also* 10 W. R. 343.

17. Lands not capable of occupation (*e.g.* a khal) belong to the person in — of the occupied lands to which they appertain; but when a khal becomes dry and culturable, if any one to whom it does not belong takes — of it, the cause of action accrues from the time of wrongful —.—9 W. R. 124.

18. Long — is not only evidence of title, but a good and valid title by itself.—9 W. R. 169.

19. When parties are in — of an estate, it is generally to be presumed that they have been in — as owners, and the *onus probandi* is on the party alleging that that — is of a different nature.—9 W. R. 556, 602; 12 W. R. 146; 20 W. R. 458. *See* 12 W. R. 175.

What is a conclusive answer to such a presumption.—11 W. R. 185.

20. Long — under a pottah from one sharer, without interference from the others, legally warrants the inference that the grantor had authority to bind his co-sharers.—10 W. R. 389.

21. Mere — of land without payment of rent for 12 years is sufficient to establish lakheraj title.—10 W. R. 61, 461. *See also* 14 W. R. 108.

22. But does not *per se* lead to any inference as to the character of the tenure, whether mokurruree or otherwise.—10 W. R. 477. *See* 11 W. R. 465.

23. Persons having a right of — may dispose of property though it is not actually in their —.—11 W. R. 134. *See* 25 W. R. 223.

24. Occasionally visiting and making use of a house may be ample evidence of —.—11 W. R. 136.

25. Anterior — for 12 years on the part of a person suing to recover — is not sufficient to do away with any necessity of proving his title.—11 W. R. 447.

26. In a suit for declaration of title, mere proof of 20 years' — cannot give a title where plaintiff fails to prove the *dubala* from his vendor, or her allegation of forcible ouster.—11 W. R. 550. *But see* 24 W. R. 167.

27. Where a party in permissive — of land sets up his own absolute title by suing the tenant for rent, he converts his permissive — into an adverse —, which, as wrongful —, is a cause of action.—12 W. R. 167.

28. When A gets — of property to a share of which B is jointly entitled, A's — inures to B's benefit, and B's cause of action dates from the time of A's —.—13 W. R. 188.

29. The — of a tenant is in the eye of the law the — of his landlord.—13 W. R. 191.

30. Mere — of ancestral property is good evidence of title against a co-sharer.—14 W. R. 51.

31. S. 230 Act VIII is not restricted to cases of personal occupation, — by receipt and enjoyment of rent being as good in law as actual occupation.—15 W. R. 70.

As to the rule that receipt of rent is good evidence of possession.—20 W. R. 183, 22 W. R. 406.

32. Where — is given to one of two holders of a joint decree, it must be held to be given on behalf of both.—15 W. R. 112.

33. Where neither of the parties nor their witnesses can state whether certain lands belong to R or C, R who is in — of the title-deeds and in receipt of the rent must succeed unless there be something on the record to the contrary.—19 W. R. 162.

34. The — meant by the first part of Exception 1 s. 108 Act IX of 1872 defined, with reference to the title to be given by a vendor to a purchaser.—20 W. R. 467.

35. A *mokurrureedar* of a village is entitled to possession of every beegah of land in it unless the party cultivating the same can show a good title against him. A party setting up a *khas* tenure as against the *mokurrureedar* is bound to prove such tenure.—22 W. R. 447.

36. A — on the part of one party, which is not shown to have commenced in wrong, can only be disturbed by distinct proof of a superior title in another party.—(P. C.) 25 W. R. 81.

See Adverse Possession.
Ameen 12.
Arms 1, 2.
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Auction-Purchaser (Execution Sale) 7, 19, 40, 41, 46.
„ „ (Revenue Sale) 2.
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Possession (*continued*).

See Enhancement 34, 69, 251.
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" (Documentary) 41, 70.
" (Estoppel) 2, 6, 16, 23, 54, 58.
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" " (Coparcenary) 15, 90.
" Widow 8, 16, 115.
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" (Act XIV of 1859) 308.
" (Act IX of 1871) 26.
" (Reg. III of 1793 s. 14) 1.
" (Reg. II of 1805) 1, 3, 4, 8.
Lis Pendens 9.
Mahomedan Law 28.
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" (Butwarra) 11, 31.
Personal Property 1.
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Practice (Attachment) 21, 69.
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Prescription 1, 2, 3, 9.
Putnee Talook 3, 7, 10, 32, 33, 43, 46, 48, 65, 99.
Receipt 1.
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Rent 56, 60, 61, 69, 79, 82, 89, 110.
Resumption 3, 6.
Right of Property 3, 5.
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See Salt 5.
Security 9.
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Shikmee 1, 2, 4, 6.
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Talook 1, 2.
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Vendor and Purchaser 2*a*, 4, 13*a*, 16, 25, 72.
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Possessory Award.

1. To disturb a — under Act IV of 1840 in a civil suit just 10 years after the passing of that award, some strong and decisive evidence of title is indispensable, and reference to every resumption proceeding is no ground for interfering with the —.—1 Hay 495.

2. A Magistrate's award under Act IV of 1840 is final on the point of possession, and can only be set aside by proof of title.—1 W. R. 349.

3. A party, seeking to disturb a — under Act IV of 1840, must date his action, not from the Magistrate's order confirming a previous possession, but from the actual date of dispossession.—2 W. R. 300.

So also as to a — under s. 318 Act XXV of 1861.—22 W. R. 196.

4. An Act IV award is not sufficient proof of title when the person in whose favor it is given does not maintain his possession under it before the Survey authorities and allows his adversary to take actual possession.—3 W. R. 129.

5. Under s. 15 Act XIV of 1859.—*See* Costs 84; Evidence (Documentary) 111; Jurisdiction 216, 226; Limitation 11; Limitation (Act XIV of 1859) 157, 186, 187, 188, 209, 212, 294; Mesne Profits 76; Onus Probandi 131; Title 10, 11; 6, 8, 9 *post*.

6. S. 230 Act VIII does not apply to a — under s. 15 Act XIV of 1859.—7 W. R. 171. (*Over-ruled*) *see* 8 *post*.

7. Possession under a Magistrate's order which is set aside by the decision of a Civil Court, cannot avail against a plea of limitation. 8 W. R. 373.

8. When a party has been dispossessed by virtue of a — under s. 15 Act XIV, he need not bring a regular suit on proper stamp to regain possession, but may apply under s. 230 Act VIII.—(F. B.) 12 W. R. F. B. 25. *See* 13 W. R. 264.

9. A person recovering possession of land by virtue of a — under s. 15 Act XIV, recovers the land with the crop growing upon it and is fully entitled to cut the same.—13 W. R. 101.

See Act IV of 1840.
Julkur 9.
Lease 10.
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" (Act XIV of 1859) 192.
Onus Probandi 259.
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Splitting Cause of Action 9.
Trespasser 2.

Post Nuptial Contract.

See Husband and Wife 39, 40.

Post Office.

Quære. Whether the opening of a newspaper is an offence under s. 48 Act XIV of 1866.—19 W. R., Cr., 4.

See Abetment 6.
Defamation 10.

POST OFFICE (*continued*).

See Evidence (Estoppel) 108.
Irregularity 12.
Summons 15.
Zemindaree Dak.

Postponement.

See Adjournment.
Practice (Criminal Trials) 61.
Sale 35, 36, 52, 105, 173, 175, 186, 187, 195, 216.

Pottah.

1. A jotedar under Government is not entitled to a — from the zemindar in respect of an accretion by alluvion to a jote the rent of which is payable to Government. W. R. F. B. 22.

2. Where nothing was shown to limit the ordinary powers of a naib, it was held that a *mourosee* — granted by the naib could not be deemed to have been granted by an unauthorized person. —1 Hay 3.

3. One co-sharer in an estate cannot grant a — to a tenant which is binding on the other sharers.—2 Hay 49.

4. The fact of there being an arrear of rent due is no answer to a suit for a —.—2 Hay 104 (Marshall 257).

5. In a suit brought under s. 3 Act X of 1859 for a — at a fixed rate from generation to generation, if the plaintiff fail in proving such a holding, he is not entitled in that suit to ask for a — at a fair and equitable rate.—2 Hay 422 (Marshall 371).

6. Suits for — by parties possessing a proprietary and transferable title (*e.g.* a putneedar), are not cognizable under Act X of 1859.—2 Hay 592.

7. Plaintiff having alleged that he was a ryot holding under a *mourosee* —, and that he was dispossessed of certain land being part of that mentioned in the —, the genuineness of the — was a natural issue in the suit. —1 R. J. P. J. 13.

8. A — granted by a person without knowledge of its purport can give no title to the person acquiring property under it.—1 R. J. P. J. 57.

9. In an abatement suit, though plaintiff did not sue for a determination of rates, but for a — at a certain rate, yet as defendant had issued notice of enhancement upon plaintiff and the enquiry as to fair rates was carried out without any objection by plaintiff and without any appeal on the point, the decree of the Lower Courts awarding plaintiff a — at fair rates was upheld.—1 R. J. P. J. 99.

10. A *dukaleenamah* or agreement after measurement to take a —, is not an agreement for life or for a term of years, but only carries the right of tenancy at will; a — cannot be claimed by it.—1 R. J. P. J. 117.

11. *Quære.* As to the intent and effect of a — in which no specific term is mentioned.—Sev. 77.

12. In a suit for a —, the ryot must prove that he holds the land in respect of which he seeks a —.—W. R. Sp. (Act X) 75 (2 R. J. P. J. 315).

13. A Mofussil naib has no power to grant a —.—1 W. R. 56.

14. A — is not to be presumed genuine merely from its antiquity.—1 W. R. 131.

15. In what cases a landlord is bound to make a tender of a —, and not insist on his tenant taking the initiative. —2 W. R. 73.

16. It does not lie within the ordinary scope of a gomashta's power to grant a —.—3 W. R. (Act X) 1.

17. The tearing up of a — is the destruction of a valuable security within the meaning of s. 477 Act XLV of 1860.—3 W. R., Cr., 38.

18. A Collector is not bound to grant a — of Government lands to the party in possession.—4 W. R. 52.

19. It is no sufficient ground for the rejection of a —, that it is a *koorfa* — and contains no term. —4 W. R. 78.

20. In a suit for the determination of rent as well as a kubooleut, the tender of a — is not necessary; the order for the delivery of a — before the decree is given effect to, being sufficient.—4 W. R. (Act X) 23.

21. A — which bars enhancement may be good as regards the person to whom it is granted, but not as regards his heirs not mentioned in the —.—4 W. R. (Act X) 41.

22. When a plaintiff comes into Court relying on a —, the genuineness of which is disputed by the defendant, the Court is bound to adjudicate the issue and to decide whether the — is valid or invalid.—5 W. R. 157.

23. A prior — granted by an ijaradar, but ratified by the zemindar subsequently to his grant of a new — to another party, cannot be questioned by such other party, who, however, has his remedy by suit.—5 W. R. 207.

24. Cl. 1 s. 23 Act X contemplates suits for delivery of pottahs by *ryots in possession only*.—6 W. R. (Act X) 56.

25. A — cannot *primâ facie* be assumed to give a hereditary interest though it contains no words of inheritance; but where proof exists of long uninterrupted enjoyment of a tenure, accompanied by recognition of its hereditary and transferable character, it is sufficient to supply the want of the words "from generation to generation."—(P. C.) 9 W. R., P. C., 3; 11 W. R. 259, 432; 24 W. R. 301.

26. Documents of the description of a *mourosee* — are not required by law to be attested.—13 W. R. 191.

27. Where a — purports to convey so many beegahs of land "more or less" within certain boundaries, the test of what is really conveyed is not the area of the land but its boundaries.—14 W. R. 301, 15 W. R. 394. *See also* 16 W. R., P. C., 5.

28. An occupant ryot in Assam does not forfeit his right to a — from Government by not applying for it so soon as another who was not in possession.—17 W. R. 158.

29. Where a —, after providing for payment "year by year, month by month, *kist by kist*," contained a declaration that, if the dur-putneedar did not, at the end of each month, pay up the amount due for that month, he should pay interest from the 1st of the succeeding month, the dur-putneedar was held bound to pay rent in monthly *kists* and liable to interest on failure.—17 W. R. 173.

30. Construction of the words "karindah" and "nijjote" as used in a —.—17 W. R. 401.

31. A — may be a confirmatory grant only; and there is nothing in accepting such a grant inconsistent with the presumption that a prior title existed.—(P. C.) 19 W. R. 353.

32. Where plaintiffs as ryots sued the 12-anna shareholders for a — corresponding with their kubooleut and according to an alleged promise, and failed to make out the ground on which they relied, but the Lower Appellate Court being of opinion that they had made out a right of occupancy and were entitled to a — at a fair and equitable rate of rent, and finding no evidence as to what such rate would be, gave them a decree at the old rate,—*Held* that the decision was erroneous as there was no evidence on which the question of a fair and equitable rate could be determined, and as it rested on a ground not taken by the plaintiffs who came into Court on a special contract; and that if the Lower Appellate Court thought that plaintiffs' right to a — had rested on their right of occupancy, it ought to have remanded the case to the first Court with directions to make the other 4-anna shareholders parties to the suit, and to try the case upon new evidence as if it were a suit for a — from all the 16-anna shareholders jointly.—20 W. R. 75.

33. In construing a — in this case (such construction being, according to the practice of the Court, treated as a question of law), the Court held that it must look to the surrounding circumstances, one of which was as to what possession was given by the grantor of the — and accepted by the grantee under the —.—22 W. R. 285.

34. In order to determine whether a — granted by a zemindar conveyed an estate for life or an estate of inheritance,—*Held* that it was necessary to arrive, as well as possible, at the real intention of the parties, to be collected chiefly from the terms of the instrument, but to a certain extent also from the circumstances existing at the time, and further by the conduct of the parties since its execution.—(P. C.) 24 W. R. 176.

See Acquiescence 8.
Auction-Purchaser (Revenue Sale) 1.
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POTTAH (*continued*).

See Ejectment 15, 37, 89, 102.
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Onus Probandi 88, 217, 219.
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Power of Appointment.

See Court Fees 24.

Power of Attorney.

1. A — authorizing an agent to bid for a particular estate to be put up for sale on a particular date, does not limit him as to time of purchase.—3 W. R. 54 (4 R. J. P. J. 402).

2. The Court cannot import into a — a limitation not contained in the deed, which binds not only the principal, but all who purchase from him, for all acts of the agent done thereunder.—6 W. R. 41.

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,, (Execution of Decree).
,, (Motions).

See Practice (Parties).
,, (Possession).
,, (Review).
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Rules of Practice.

Practice (Amendment).

1. Variation of case after rejection of documentary evidence not allowable.—W. R. F. B. 23 (1 Hay 234, Marshall 70), 7 W. R. 163. *See* 21 W. R. 36, 22 W. R. 428.

2. Where an Appellate Court was held to have been wrong in amending a decree of the first Court by inserting what was in dispute among the co-plaintiffs, viz. the amount of one plaintiff's share.—1 Hay 66.

3. There is no power in the Court to amend a plaint after it has once been admitted. If, after admission and pending decision, any amendment is necessary, it must be done under s. 141 Act VIII of 1859 by adding a fresh issue. —L. R. 161.

4. Where a plaint was amended on grounds other than those authorized by s. 29 Act VIII of 1859, but no injury resulted to defendant and no objection had been taken before the Lower Appellate Court, the High Court on special appeal refused to interfere.—L. R. 170.

5. The High Court refused on special appeal to convert an order rejecting an appeal into one returning it for amendment.—W. R. Sp. 386.

6. Where a decree awarded mookhtar's fees contrary to s. 71 Act X of 1859, and it was amended in execution instead of by application to the Court of first instance, the amendment was not interfered with, no injustice having been done thereby.—W. R. Sp. (Act X) 11 (2 R. J. P. J. 78).

7. Act VIII gives the Court no power to allow a plaint to be amended after it has been admitted, except for the purpose of adding parties under s. 73.—1 Hyde 98. *But see* 10 *post.*

8. The proper course, with regard to an error in a decretal order, is to apply to the Judge who passed the order to have the error corrected, and not to appeal.—1 W. R., Mis., 8. *See also* 6 W. R., Mis., 31, 122; 8 W. R. 277; 9 W. R. 394; 13 W. R. 330.

So also as to a predecessor's decree.—12 W. R. 65.

So also as to a decree of the first Court affirmed on appeal by the Judge.—21 W. R. 41.

9. Amendment of charge after acquittal.—*See* Conviction 1.

10. Where the general power of a Court, under Act VIII, to amend a plaint where justice required such amendment at any time during the progress of the cause, was asserted. —(F. B.) 2 W. R. 207 (4 R. J. P. J. 197).

11. A decree should not be amended, except in the presence of the parties affected, or after service of notice on them to attend.—2 W. R., Mis., 15; 19 W. R. 349.

12. When a Judge transfers a case to his own file, he can amend the issues and record additional issues.—3 W. R. 147.

13. Variation of title by plaintiff not allowable.—5 W. R. 197, 6 W. R. 1, 18 W. R. 274.

14. The power of the Lower Courts to amend a plaint extends by a *vivâ voce* examination to the elucidation of what is ambiguous in the claims of the contending parties, to the amendment of what is erroneous, and the supplying of what is defective, but not to the conversion of a suit of one character into another inconsistent with and opposed to it.—(F. B.) 6 W. R. 211. *See* 21 W. R. 199.

15. The defect of Magistrate to charge under different heads several offences chargeable under the same section, as provided by ss. 238 and 241 Act XXV of 1861, may be amended by Sessions Judge under s. 241.—7 W. R., Cr., 8.

16. Where a defendant was sued on a contract, and the plaintiff failed because it turned out, on the evidence, that the defendant was not liable, being only an agent and without authority, the plaint was not allowed to be amended so as to make him liable for misrepresenting that he had authority.—9 W. R. 206.

17. Every Court has a right to correct its formal records in such a way, if needed, as will make them represent truly the decision which was intended to be judicially expressed. —9 W. R. 301. *See* 9 W. R. 471, 11 W. R. 141, 20 W. R. 111.

Practice (Amendment) (*continued*).

So where a Court intended and ordered the sale of the whole of certain mortgaged premises, and the conveyance by mistake dealt with a part of the premises, the Court rectified the instrument.—25 W. R. 332.

18. Amendments in a charge ought to be made formally and should appear on the face of the record.—9 W. R., Cr., 14.

19. The refusal of a Court, in exercise of the discretion vested in it by s. 28 Act VIII, to allow a plaint to be amended, is no ground of special appeal.—10 W. R. 87.

20. Where a Judge is of opinion that a plaintiff has mis-stated his cause of action, he ought to direct him to amend his plaint instead of refusing to try the suit.—11 W. R. 223.

21. The limitation prescribed for an application for review does not apply to an alteration of a clerical error in a decree.—12 W. R. 65.

22. Power of Court to recall order.—*See* Fraud 17.

23. In a suit in which plaintiff sued as partners for damages for non-delivery of certain goods, and in which it was found on the evidence that two of the plaintiffs were not partners at the time the cause of action accrued or when the goods were to be delivered, the Lower Court ordered that the names of the two plaintiffs who were not parties should be struck out of the plaint and gave a decree to the rest of the plaintiffs,—*Held* on appeal that the Judge had power to amend the issue, and that that was the correct mode of amending errors in a plaint, with reference to s. 141 Act VIII.—14 W. R., O. J., 11.

24. After a decree is confirmed by the High Court on appeal, the Subordinate Court has not the power of making any alteration whatever in it; the decree having become a decree of the High Court.—14 W. R. 26. *See* 11 W. R. 288.

25. A plaintiff cannot be allowed to amend his case only when he has an honest case but either through mistake or some misapprehension has not placed the real facts before the Court.—16 W. R. 123.

26. Even if a plaintiff has been misled, by various representations of the defendant, into framing his suit in a particular way, still he can only recover according to his allegations and proofs, and cannot be allowed to set up an entirely new case not set up or hinted at in the plaint.—(P. C.) 19 W. R. 12.

27. Where a suit has been erroneously brought under s. 30 Act VIII of 1869 (B. C.) and plaintiff applies to have his plaint amended, the suit should not be dismissed, but some order should be passed on the application.—19 W. R. 61.

28. Where the principal defendant, after the evidence of both parties had been taken, applied to file an amended written answer raising a new question,—*Held* that the Lower Court ought, under s. 141 Act VIII, if it thought the question was the real one between the parties, to have amended the issues in order to its determination.—20 W. R. 208.

29. Although a plaintiff need not be tied down to the exact form of his plaint, yet, when he seeks to introduce any change, he must show that the view of the matter which he now puts forward had been in the contemplation of the parties, so that they had an opportunity of bringing forward evidence on the point, and that the evidence on the record was directed to the substantial case set up.—22 W. R. 346.

30. Where a plaint was amended upon a new allegation by plaintiff,—*Held* that defendant ought to have been allowed an opportunity to make his defence upon the new allegation, and upon that defence new issues ought to have been recorded if necessary, and further evidence taken.—23 W. R. 172.

31. Where an accused was charged and convicted under s. 44 instead of s. 48 Act XXI of 1856, and it appeared that he had not been misled as to the charge against him and consequently in no way prejudiced, the conviction was allowed to be altered so as to bring it under s. 48.—24 W. R., Cr., 3.

See Account 5.
Appeal 161, 171.
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Stamp Duty 52.

Practice (Appeal).

1. A Lower Appellate Court cannot decide on a point not pleaded.—W. R. F. B. 13 (1 Hay 95, Marshall 40).

2. On appeal by plaintiff whose deed of sale had been rejected by the first Court, the Lower Appellate Court not only confirmed the judgment of the Lower Court as to that deed of sale, but also declared defendant's deed of sale to be spurious. *Held*, in special appeal, that the Lower Appellate Court should have confined its decision to the validity or otherwise of plaintiff's deed of sale only.—1 Hay 110.

3. A Lower Appellate Court is bound, under s. 347 Act VIII of 1859, to decide upon the application for re-hearing, whether or not the appellant be prevented from appearing when the appeal is called on.—2 Hay 495.

4. Where there was reason to suppose that the plaintiff's claim which had been dismissed by the first Court and decreed by the Lower Appellate Court, would be found to be barred by limitation, the High Court in special appeal remanded the case to the Lower Appellate Court with a direction to raise and try the issue.—Marshall 647.

5. If a Judge thinks that a co-defendant (a co-sharer with plaintiff in the disputed property) needs to be made a respondent in the appeal, he should, under s. 73 Act VIII of 1859, cause him to be made such instead of dismissing the appeal.—W. R. Sp. 136.

6. One of several defendants who appeals in respect only to the sum decreed against her, is not entitled to take advantage of s. 337 Act VIII of 1859 and question the full amount claimed.—W. R. Sp. 380 (L. R. 153).

7. An Appellate Court should not, as an ordinary rule (except as to jurisdiction), take up points in bar not taken in the Lower Court.—W. R. Sp. (Act X) 133 (3 R. J. P. J. 123). *See* 2 W. R. 161, 10 W. R. 77, 13 W. R. 10.

8. Where the parties in two or more suits are the same, and the decision in one case governs all the cases, the filing of copies of the judgment and decree passed in the principal case is a sufficient compliance with the law, —W. R. Sp., Mis., 9, 28. *See* 9 W. R. 276.

9. A *pro formâ* defendant cannot be allowed in appeal to raise objections which he neglected to raise in the suit.—W. R. Sp., Mis., 31.

10. A Lower Appellate Court cannot, under s. 11 Act XXIII of 1861, reverse an order of the Lower Court and allow a person, representing himself to be the purchaser of a decree from the decree-holder, to execute the decree.—W. R. Sp., Mis., 35. *See also* 5 W. R. 215.

11. An appellant, whose time for appealing expires during a vacation, may put in his appeal on the first day the

PRACTICE (APPEAL) (*continued*).

Court opens after the vacation.—W. R. Sp., Mis., 40. *See* 12 W. R. F. B. 21.

12. An objection which, if taken, might have been cured, and which has not been taken in the Court below, cannot be taken in the Court of Appeal.—(P. C.) 6 W. R., P. C., 43 (P. C. R. 147).

13. In an appeal from part of a decree, the whole decree is not open to the respondents. Under the peculiar circumstances of this case, leave was given to present a cross-appeal, and the appellant not objecting, the appeal was heard from the whole decree.—(P. C.) 2 W. R., P. C., 4 (P. C. R. 462). *See also* 24 W. R. 389.

14. The decision of a Court of original jurisdiction upon a question of fact ought not to be reversed by a Court of Appeal unless the latter is satisfied beyond all reasonable doubt that the decision was wrong.—1 Hyde 123.

15. A Court of Appeal cannot refer to the evidence in another case or act upon the impression made by it on the Court below.—1 Hyde 223.

16. The rule of the Privy Council not to disturb a judgment of a Court in India upon a question of fact unless it is clear from the probabilities of the case that the judgment is wrong, however necessary as regards a Court of Appeal far removed from India, is not equally necessary nor applicable with the same strictness to a Court of Appeal in India.—*Ib.*

17. A remand is allowable only under the circumstances contemplated in s. 351 Act VIII. When the Judge requires further evidence, he should call for it under s. 354.—1 W. R. 6. 298. *See also* 15 W. R. 346.

If the Judge is of opinion that the plaintiff is endeavouring to obtain something other than what he claims in the plaint, he should dismiss the suit; but if he thinks that the plaint can be reconciled with the argument on appeal and the case is supported by the evidence, he is bound to determine the appeal and not make an order under s. 351. —24 W. R. 121.

18. Lower Appellate Court bound to determine the issue of limitation where first Court had tried it.—1 W. R. 59. 25 W. R. 13.

19. An Appellate Court cannot remand a case for re-trial with instructions to frame new issues. It may refer any issues for trial by the Lower Court, whose finding and evidence are to be returned to the Appellate Court for a final decision.—1 W. R. 69.

20. Where a decree gives title to land to defendant and right of way to plaintiff, and plaintiff alone appeals, Appellate Court must not raise an issue as to right of way without cross-appeal from defendant.—1 W. R. 77.

21. An appellant is entitled to an adjudication on a point included in his grounds of appeal.—1 W. R. 93. *See also* 12 W. R. 525.

22. When a suit has been heard and determined by a Court of first instance, the Appellate Court should not adjudge the case merely upon the allegations contained in the plaint.—1 W. R. 198.

23. A decree against several defendants cannot, upon the appeal of one of them, be reversed, under s. 337 Act VIII, as against all where it did not proceed on a ground common to all.—1 W. R. 203. *See also* 1 W. R. 229; 2 W. R. 170, 227, 287; 2 W. R. (Act X) 31; 9 W. R. 172, 499, 558; 10 W. R. 285; 11 W. R. 239, 449; 14 W. R. 130, 119; 16 W. R. 285; 17 W. R. 353; 18 W. R. 26. 39, 331; 20 W. R. 149; 21 W. R. 112; 23 W. R. 166; 25 W. R. 29.

24. The hearing of an appeal having been fixed for the 14th December, the deciding of it on the 12th (when the pleaders were present) is no such defect in procedure as to render interference in special appeal necessary.—1 W. R. 246.

25. A Judge on appeal may take up the question of jurisdiction even at a late stage, after having himself remanded the suit for local investigation. —1 W. R. 259.

26. An Appellate Court should state reasons for dissatisfaction with the Lower Court's finding as to the genuineness of a deed.—1 W. R. 339.

27. The Lower Court, in taking evidence ordered under s. 355 Act VIII, acts in a ministerial capacity. An objection may be raised to documents on appeal, though not made in the Court below.—2 W. R. 80.

28. An Appellate Court has no power to interfere with an order of a Court of first instance enlarging the time for filing documents.—2 W. R. 287.

29. An appeal to the Judge for a decision of a Deputy Collector in a suit under Act X of 1859, must, according to s. 16 Act VIII, be presented by the appellant in person or by a pleader, and not by a mookhtar.—2 W. R. (Act X) 67.

30. The time during which an application for a review of judgment is pending is not to be taken into account within the 90 days allowed for appeal.—(F. B.) 2 W. R., Mis., 35. *See also* (F. B.) 7 W. R. 529, 15 W. R 61, 22 W. R. 79.

31. Where plaintiff has been offered by an Appellate Court a remand to enable him to produce fresh evidence and has elected to go to trial on the record as it stood, he cannot, after failing to prove his case, be permitted what he once refused.—3 W. R. 5.

32. When the Judge reverses a Collector's decision in appeal as passed without jurisdiction, he should proceed to decide on the merits the appeal as from the decision of the Deputy Collector.—3 W. R. (Act X) 14 (4 R. J. P. J. 399).

33. When a long holiday intervenes, a new date should be fixed for the hearing of a cause which was on the list but not called on before the holiday.—3 W. R. (Act X) 164.

34. A respondent must be held to the grounds on which he rested his case when the appeal was before the Court prior to the case being remanded to enable him to prove a particular allegation. —3 W. R., Mis., 5.

35. A special appeal is not converted into a regular appeal, because the Judge, sitting as a Court of Appeal, recorded further evidence under s. 356 Act VIII, or pronounced a judgment on the evidence recorded, which had not been considered by the first Court as described in s. 353.—1 W. R. 43.

36. One of two defendants may, under s. 337 Act VIII, appeal as respects the whole, and not half, of the property in dispute, in the absence of proof that they owned the property in two equal shares.—4 W. R. 68.

37. A Court hearing an appeal from an order made by a Principal Sudder Ameen rejecting a plaint, because the suit was within the Moonsiff's jurisdiction, may at the same time direct the Principal Sudder Ameen to try the suit as a Moonsiff.—4 W. R. 85.

38. A plea not taken before the Lower Appellate Court was allowed to plaintiff (appellant) on special appeal, where some of the defendants were released by the first Court from all liability without any trial on the merits as between them and the plaintiff.—4 W. R. (Act X) 3.

39. Under s. 161 Act X read together with s. 333 Act VIII, it is in the discretion of a Judge to allow an appellant a deduction for the time during which the appeal was before a Court without jurisdiction.—5 W. R. (Act X) 44.

40. According to s. 152 Act X, the appeal from an order of a Deputy Collector must be presented within 15 days; the Collector has no power to extend the time for appeal as provided by s. 333 Act VIII.—5 W. R. (Act X) 46.

41. An appellant is in time if his appeal is lodged within 6 months of the order rejecting his application for review of judgment. —5 W. R., Mis., 17. *See also* 1 W. R., Mis., 13.

42. For the restoration of possession with mesne profits of lands made over in execution of a decree subsequently reversed on appeal, a specific order is not necessary to be inserted in the decree of the Appellate Court.—5 W. R., Mis., 39.

43. An Appellate Court has no power to interfere with the discretion vested in the Lower Court under s. 377 Act VIII, of admitting a review of judgment after 90 days.—6 W. R. 99.

44. Plaintiff's suit against three sets of defendants interested in three different plots of land A, B, and C, was decreed by the first Court as regards A. On appeal regarding A, the Judge not only reversed the Lower Court's decision as regards A, but gave plaintiff a decree as regards B and C. On special appeal regarding A, plaintiff did not succeed; but the defendants interested in B having been served with a notice to appear, were treated as respondents, and upon these objections, under s. 348 Act VIII, the Judge's decision was reversed not only as regards B, but also as regards C, although the defendants interested in C did not appear.—6 W. R. 104.

45. Where, on the appeal of one of several judgment-debtors, the bond on which plaintiff sued is found to be false, the other parties to the deed are also released though they did not appeal.—6 W. R. 323.

46. Where a suit was wrongly brought in the Civil Court, the Judge on appeal should have refused to exercise juris-

PRACTICE (APPEAL) (*continued*).

diction in the matter, instead of going into the merits when he thought that he had no jurisdiction.—6 W. R. (Act X) 21.

47. When a suit against an agent and his surety is decided against the former alone and plaintiff appeals to make the latter liable, the Appellate Court cannot, under s. 337 Act VIII, reverse the decision as against the agent because it did not proceed on a ground common to both defendants.—6 W. R. (Act X) 82.

48. A verified petition for the re-admission of an appeal is not evidence, but must be accompanied by evidence in support of the allegations on which it is founded.—6 W. R., Mis., 43.

49. If the period within which an appeal ought to be filed expires on a Sunday, the practice is to admit the appeal on the following day.—6 W. R., Mis., 106.

50. Where a suit was dismissed by a Moonsiff for want of evidence (plaintiff's pleader having stated that he had no instructions and could not proceed in the absence of his client), a regular and not a miscellaneous appeal lay to the Judge from the order of dismissal.—6 W. R., Mis., 129.

51. If in a suit against two parties a decree is given against one alone, the other cannot be made liable either on the appeal of the first party or on plaintiff's cross-appeal.—7 W. R. 49. 11 W. R. 238.

52. Where Lower Court decided the issue of limitation against, but the other issues in favor of defendants, and the Appellate Court remanded the case for further investigation without passing any judgment on the issue of limitation, the Appellate Court had jurisdiction, when the case again came before it, to try the question of limitation. —7 W. R. 67. 19 W. R. 209.

53. Where a Principal Sudder Ameen most irregularly (with reference to s. 124 Act VIII) fined a vakeel one rupee for filing a written statement which was in his opinion too prolix, and ran his pen through a great portion of it including a statement setting up a plea of limitation, the Judge on appeal went into the question of limitation, he was held right in doing so. —7 W. R. 212.

54. So much of s. 354 Act VIII as relates to the trial of additional issues is only applicable to regular and not special appeals.—7 W. R. 326. 21 W. R. 20.

55. A *pro formâ* defendant who appeals, cannot, by making the real defendants respondents, open up the part of the case which has not been appealed against.—7 W. R. 366. *See also* 7 W. R. 532. 11 W. R. 238.

56. A Judge ought not to make a case for a plaintiff which he does not make for himself.—7 W. R. 178. 24 W. R. 268.

57. An Appellate Court cannot, after admitting and registering an appeal, reject it at the hearing, because it was not presented within the prescribed time.—8 W. R. 141. 13 W. R. 245. *But see* 13 W. R. 351.

58. An Appellate Court should not affirm a decision on one part of a claim, when it remands the substantial part. —8 W. R. 303.

59. Where a decree in an action of tort has been appealed from, the purchaser of a share of the property of defendant (appellant) who died after the purchase, is not entitled to carry on the appeal in the place of the deceased under ss. 102 and 103 Act VIII extended by s. 37 Act XXIII of 1861.—9 W. R. 271.

60. Where the finding on an issue referred to the Lower Court under s. 354 Act VIII is returned with the evidence, and no memorandum of objection is filed within the time fixed, objection cannot be allowed to be taken when the appeal comes on for final determination.—9 W. R. 438. *But see* 15 W. R. 235.

61. The words "cases in appeal" in s. 37 Act XXIII of 1861 apply solely to cases where the actual subject of appeal is before the Court and is being dealt with; and therefore s. 37 cannot make s. 7 applicable to cases in which the Judge has dismissed the appeal for default under ss. 5 and 6; if an application is made to the Judge for the rehearing of the appeal or case, it must be treated as an application for review of judgment, and the decision upon it is final.—10 W. R. 160.

62. A new statement of the law by the High Court is no excuse for delay in appealing against a judgment.—18 W. R. 178.

63. Held in appeal that plaintiff's case could not be supplemented by examining parties or books not produced in the Court below.—10 W. R. 402.

64. Where, in an appeal against part of a decree, the party in whose favor the decree is made, is made sole respondent, the Appellate Court has only to determine whether, as between appellant and respondent, the order of the first Court is correct. —10 W. R. 432.

65. In a suit for enhancement of rent remanded to the Lower Appellate Court with the instruction that sufficient evidence had been adduced to raise the presumption of uniform payment of rent, the Judge may direct the first Court to hear further evidence upon the point.—10 W. R. 442.

66. Under ss. 11 and 38 Act XXIII of 1861 the ordinary rule of procedure applicable to civil suits before final judgment will apply to an appeal arising out of an order made in execution.—10 W. R. 450.

67. An appellant is entitled to the whole time allowed by an Appellate Court in transmitting notice of an appeal to the Lower Court, before the latter Court can make a return.—11 W. R. 136.

68. One defendant cannot appeal as against his co-defendants; but if he is allowed to do so, and the appeal is decided against him, it does not lie in him to ask that the decision may be set aside on the ground that the Court had no jurisdiction.—11 W. R. 410.

69. Where an appellant is unable to serve notice of appeal on plaintiff (respondent) from inability to trace his residence, the case may be dealt with in analogy to the procedure relating to summons under s. 57 Act VIII.—11 W. R. 496.

70. Procedure in appeals to the High Court under s. 81 Act XX of 1866.—12 W. R. 2.

71. A fair and reasonable objection may be allowed at the hearing though not taken in the written grounds of appeal.—12 W. R. 69.

72. Where no new matter was brought forward by a respondent, and the High Court came to a conclusion after research into the record, the Court did not deem it necessary to hear the appellant in reply.—12 W. R. 303.

73. A decree under s. 116 Act VIII is not an *ex-parte* decree even against absent defendants, and may under s. 337 be modified in appeal even in favor of defendants not before the Appellate Court.—12 W. R. 376.

74. S. 337 applies to *ex-parte* decrees as well as to other decrees, the only question being whether the decision of the Lower Court proceeded on a ground common to all the defendants.—13 W. R. 114.

75. Where plaintiff appealed from a decision dismissing his suit, and although the defendant's death was notified to the Court, and the plaintiff did not attempt, under s. 101 Act VIII, to bring in the heirs of the deceased or have the deceased in any way represented, the Court tried the appeal and passed a decree against the deceased's estate.—*Held* that the decision of the Lower Appellate Court was incorrect in law. —14 W. R. 337.

76. A Judge on appeal should not entertain a point wholly different from the case made in the Court below.—14 W. R. 466.

77. Nor can he entertain a point which was abandoned in the first Court.—15 W. R. 20.

78. A Judge on appeal, in decreeing a suit (between two rival decree-holders) for satisfaction of plaintiff's claim from the sale proceeds of a house, should himself determine and adjudge the value of the house, and not refer that duty to the Execution Department.—15 W. R. 124.

79. A plaintiff obtaining a decree which is appealed against, is not bound to bring a cross appeal because the first Court did not accept a portion of the evidence; but the Appellate Court must examine and weigh the whole of the evidence adduced by the parties.—15 W. R. 135.

80. A Judge is bound to go into all matters raised before him in appeal, even if the appellant appears to have made a false statement, or if he sought to palm off a spurious document upon the Appellate Court.—15 W. R. 243.

81. A case should not be thrown out by the Lower Appellate Court on a technical objection, such as that the plaint had not been filed by a recognized agent within the meaning of s. 17 Act VIII, when the merits of the case are not affected.—15 W. R. 245.

82. Where a suit under Act X was decreed by the Collector on the ground of an *ex-parte* enquiry made by the plaintiff's mohurrir, and plaintiff in appeal chose to

PRACTICE (APPEAL) (*continued*).

rely on the Collector's opinion that the mohurrir's report was evidence, he was not allowed to supplement his case by further evidence after the Judge had decided the point against him.—15 W. R. 260.

83. How a party may satisfy the High Court that grounds of appeal omitted to have been noticed by the Judge were actually taken before him.—15 W. R. 296.

84. When both the parties and subject-matter are different, a Judge should not, without the consent of the parties, allow his judgment in one case to govern his decision in another case.—15 W. R. 342.

85. When parties have had an opportunity to put in such evidence as they consider sufficient to entitle them to a judgment upon the material issues of the case, the evidence ought to be held sufficient under s. 353 Act VIII to enable the Appellate Court to pronounce a satisfactory judgment. —16 W. R. 211.

86. A finding of a Court of first instance not appealed against cannot be interfered with in appeal.—16 W. R. 300.

87. An Appellate Court may, under s. 355 Act VIII, admit additional evidence.—17 W. R. 47. *See also* 24 W. R. 325.

And take the evidence of witnesses omitted to be summoned by the Lower Court.—22 W. R. 268 (*reversed in appeal*) 23 W. R. 51.

88. In a suit to recover accounts and papers, the Appellate Court, instead of leaving it to be ascertained in execution what accounts and papers are in the hands of the defendant, should remand the case for the trial of that issue, and whether they have been wrongfully refused.— 17 W. R. 409.

89. Where, in the last stage of appeal, a case is made which is hardly consistent with the false case originally set up and which was never made the real issue between the parties in any previous stage of the litigation, it cannot be relied on in any degree so far as it affects the case made by the other side.—(P. C.) 18 W. R. 523.

90. Where a Subordinate Judge in appeal, having remanded a case for trial upon a fresh issue under s. 351 Act VIII, directed the Moonsiff to give plaintiff a decree in accordance with the finding, and the Moonsiff decided the case accordingly.—*Held* that the Additional Judge, in appeal from the Moonsiff's decision, had no power to go behind the order of the Subordinate Judge on the previous occasion.—19 W. R. 281.

91. Where an appellant failed for 12 months to serve notice of appeal upon his respondent, the Court refused to allow him the opportunity to have a fresh summons issued and served.—20 W. R. 62.

92. Where the party serving the notice of appeal finds the respondent absent from home and is told where he is and yet affixes the notice to the door of his house, such service is void and of no effect.—*Ib.*

93. A judgment passed in review is the final judgment as regards the parties to that review; and the right of appeal from the decretal order runs from the date of the final order on review, even if the Appellate Court should put aside the review order.—20 W. R. 101.

94. Where two parties to a suit appeal, so that the one appeal is but the cross-appeal of the other, there ought to be only one final decree made between the two parties.— 20 W. R. 294.

95. A District Judge has no authority, when hearing an appeal from a Moonsiff's decision, to vary or ignore the directions made by an Appellate Court of co-ordinate jurisdiction such as that of the Subordinate Judge, but should be guided by the practice which obtains in the High Court where, when one Division Bench sees fit to give certain directions, any other Bench before which the case may afterwards come on has to keep itself within those directions.—21 W. R. 199.

96. A plea may be taken in special appeal, though not set out in the plaint, if the plaint did set out all the facts necessary to support the plea, and there was no omission calculated to mislead the Court.—22 W. R. 73.

97. An agreement founded upon a case which is not set forth in the pleadings and is inconsistent with the case thereby made, cannot be allowed to be raised for the first time in the appellate stage of the case.—22 W. R. 216.

98. Where a plea of limitation has been over-ruled, and the first Court has adjudicated upon the plaintiff's title, the Lower Appellate Court is bound to adjudicate upon the title also.—22 W. R. 292.

99. Where an Appellate Court remanded a case under s. 356 Act VIII for evidence to be taken on one of the points raised, and at the same time recorded the impression which his mind had received on the other parts of the case, the opinion so recorded was held not to be a judgment on appeal.—23 W. R. 77.

100. Where no objection is taken before the first Court to an account which is there stated to have been prepared as agreed to by both parties, it cannot be taken in the Appellate Court.—23 W. R. 251.

101. An Appellate Court exceeds its authority in giving plaintiff a relief for which he does not ask, s. 331 Act VIII notwithstanding.—24 W. R. 179.

102. Where the plaintiff in a suit has been decreed to be the heir of a deceased person to the exclusion of one of the defendants who does not appeal, the rights of the latter cannot be asserted in appeal by the other defendants for the purpose of defeating the plaintiff's suit.—24 W. R. 365.

103. On a question of simple credit to be given to a witness, an Appellate Court having before it merely written depositions, is not authorized to set aside the opinion of the first Court which heard the witness and recorded that his demeanour was not satisfactory.—25 W. R. 26.

104. The Lower Appellate Court, on appeal, can set aside the whole decree, although the appeal is only on behalf of the intervenor.—25 W. R. 29.

105. Where a suit which had been decreed in the first Court, was dismissed in appeal after the death of the plaintiff, and the representatives of the latter had not aided in keeping the appellant ignorant of his death, the High Court met the difficulty, as to executing a decree against a dead man, by directing the Lower Appellate Court to try the appeal *de novo*, making the dead man's representatives respondents.—25 W. R. 108.

106. A suit for enhancement of rent was defended on two grounds, the first of which was over-ruled but the second succeeded and the suit was dismissed. Plaintiff appealed, and the second ground having been over-ruled in appeal, the respondent (defendant) again put forward the objection which had been over-ruled by the first Court. *Held* that, under the circumstances, it was not too late for him to take that objection.—25 W. R. 110.

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Practice (Attachment).

1. The attachment of a decreed debt may be made under s. 236 Act VIII of 1859, there being no distinction under that section between private debts and decreed debts.—S. C. C. 84.

2. Where any money is in deposit in Court, the attachment should be made under s. 237, and all questions of title or property referred to be determined by the Court in which the money is in deposit.—S. C. C. 84. *See also* 16 W. R. 11, 20 W. R. 73.

3. S. 18 Reg. VIII of 1819 provides for the deputation of a sezawal only after a balance of rent has remained unliquidated for a whole month; otherwise the attachment is illegal, and the principal is bound to give a true and full account of all collections so illegally made by his agent, allowance being only made for such disbursements as are shown to be necessary and *bonâ fide*.—2 Hay 347.

3*a*. In an application under s. 81 Act VIII, the Court must be satisfied that a removal of goods is being made, or about to be made, with a view to evade the execution of a decree in a specific suit, though it is not necessary that the suit should be actually commenced at the time of their removal.—2 Hyde 183.

3*b*. An attachment once legally made is revived upon the reversal of the sale in execution.—W. R. Sp. 26. *See* 10 W. R. 380, 12 W. R. 142, *also* 21*a* and 65 *post*.

4. S. 88 Act VIII of 1859 is not applicable to an attachment made previously to that Act coming into operation.—W. R. Sp. 224.

4*a*. The attachment of a property is adverse possession causing limitation to run as against the party in possession of the property.—W. R. Sp. 305 (L. R. 85).

5. Under ss. 86 and 87 Act X of 1859 a decree may be attached as part of a judgment-debtor's effects; it does not fall under the head of immoveable property.—W. R. Sp., Mis., 28.

5*a*. A qualified decree directing realization by attachment only, and not by sale, is not authorized by law.—1 W. R. 161.

6. Each of several decrees held by attaching creditors must be satisfied according to priority of attachment.—1 W. R., Mis., 16; 15 W. R. 158; 23 W. R. 373.

7. When property is attached by two different decree-holders and sold at the instance of the one who made the second attachment, the claim of him who made the prior attachment must be first satisfied from the sale proceeds, but he cannot again sell the rights and interests of his debtor in the property.—2 W. R. 296. *See also* 17 W. R. 89.

He may, however, proceed against other property belonging to the judgment-debtor.—18 W. R. 174.

8. Procedure where attachment is sought of property situate out of the jurisdiction of the Court by which the decree was passed.—2 W. R., Mis., 55.

8*a*. A decree-holder cannot be allowed to attach his judgment-debtor's right to appeal or right to future maintenance.—3 W. R., Mis., 16. *See also* 6 W. R., Mis., 64; 7 W. R. 311; 8 W. R. 41; 23 W. R. 427.

8*b*. A right of action is not liable to attachment under s. 205 Act VIII.—3 W. R., Mis., 18.

9. Compensation under s. 88 Act VIII can only be awarded, on the application of the defendant, by the Court which disposes of the case, and cannot be given by another Court in whose custody certain property belonging to the defendant has been found and attached at the instance of the plaintiff; and no appeal lies from such an order.—3 W. R., Mis., 28. *See also* 8 W. R. 332.

10. An attachment cannot subsist when the suit has been struck off for neglect to pay in *tulubana* for the service of the necessary sale processes.—5 W. R., Mis., 4. *See* 18 W. R. 512. *See* 21*a*, 65 *post*.

11. A Court ought not to order property belonging to a judgment-debtor to be attached and placed under management in respect of a decree-holder who never applied to the Court to have his claim included among those for the repayment of which the judgment-debtor's property was attached.—5 W. R., Mis., 21.

12. Priority of attachment must be established by clear proof.—6 W. R. 21.

13. Distinction between ss. 81 *et seq* (relating to attachment before judgment) and s. 92 which applies to injunctions and to the appointment of a receiver or manager.—6 W. R., Mis., 1.

14. Compensation may be awarded to a defendant under s. 88 Act VIII for excessive attachment, notwithstanding that the plaintiff may be partly successful.—6 W. R., Mis., 24.

15. An attachment of immoveable property is not voidable merely because all the forms prescribed in s. 239 Act VIII have not been followed, when the irregularities complained of are immaterial and not productive of any substantial injury to the person complaining.—6 W. R., Mis., 52.

16. Government promissory notes in the custody of a Collector are sufficiently "*in custodiâ legis*," and need not be brought into Court under s. 238 Act VIII.—8 W. R. 315.

16*a*. A Deputy Magistrate has nothing to do with the legality or formality of an attachment by the Civil Court.—8 W. R., Cr., 17.

17. Priority of attachment does not give a decree-holder a right to set aside a sale made by another decree-holder on a subsequent attachment, but merely to be first paid out of the proceeds of sale as provided by s. 270 Act VIII.—9 W. R. 243. *See also* 17 W. R. 89.

17*a*. The attachment of an estate under Reg. II of 1806 includes its mesne profits.—9 W. R. 450, 12 W. R. 391.

18. The Court of a Deputy Collector was held to be a Court of justice competent, under s. 237 Act VIII, to determine the question of priority.—10 W. R. 43.

19. Money payable to sirdars as wages of coolies is not attachable under s. 236 Act VIII in execution of a decree against the sirdar.—10 W. R. 149.

20. To render an attachment of immoveable property effectual so as to render a subsequent alienation void (with reference to ss. 235, 239, and 240 Act VIII), the several processes prescribed in s. 239 must be gone through.—10 W. R. 264, 13 W. R. 136.

21. Attachments made before judgment, though perfected by judgment and not requiring fresh process of attachment to be taken out, do not prevent possession of the attached property from being taken by the Official Assignee, should it not have been sold before that officer is appointed to the charge of the property.—10 W. R. 353. *See* 14 W. R. F. B. 38.

Practice (Attachment) (*continued*).

21*a*. Where property is under attachment, the mere fact of the execution case being struck off the file does not put an end to the attachment.—10 W. R. 380; 12 W. R. 142, 260; 17 W. R. 15, 234. *See* 3*b* and 10 *ante* and 65 *post*.

22. Debts actually due, such as salaries from a Railway Company to any of its servants, can be attached under s. 236 Act VIII. In the case of a Railway Company, the registered letter to be sent under s. 239 should be addressed, directed, and sent to the Agent of the Railway Company at the head office of the Company. It is not necessary that the registered letter should be sent or delivered by the High Court, notwithstanding the head office is within the jurisdiction of the High Court and out of the jurisdiction of the Court executing the decree.—10 W. R. 447.

23. The order of the judgment-debtors (in the above case) upon the Paymaster to pay out of their salaries does not alter the case, as the Court executes its decrees as directed by law, and not according to the consent of the judgment-debtors. —11 W. R. 69.

23*a*. A monthly allowance or annuity, granted by deed as maintenance, payable from grantor's estate and recoverable therefrom if not paid, is liable to attachment under s. 205 Act VIII.—11 W. R. 138, 17 W. R. 251.

But though the prospective attachment and sale of a judgment-debtor's right to an allowance by way of maintenance allowed by a decree of Court cannot be ordered, yet in view of an instalment becoming due, the Court may make an order for non-payment.—15 W. R. 188, 24 W. R. 5.

24. A creditor attaching an estate paying revenue to Government must give the special information indicated in the latter clause of s. 213 Act VIII, as well as that required by the first clause.—11 W. R. 175.

25. An attachment once made will subsist, if not expressly abandoned by the party at whose suit it was issued, until an order for withdrawal is issued, even although no further steps are taken on the attachment within a reasonable period.—11 W. R. 517. *See also* 15 W. R. 222.

26. Where a judgment-creditor applies for a second attachment of his own accord, the first must be deemed to be abandoned; but where the second attachment is taken out only because the Court requires him to begin *de novo*, the first attachment remains in force. —*Ib.*

27. *Quære*. Whether a person making an attachment under Reg. II of 1806 is entitled to have his claim satisfied before the other decree-holders.—12 W. R. 48.

28. Liability of a decree-holder for the wrongful attachment of the goods of a stranger in the execution of a decree. —12 W. R. 329.

29. Reg. II of 1806 does not give a judgment-creditor, holding an attachment made prior to judgment, any priority over another who comes in and attaches the same property. —12 W. R. 391.

30. If a debt to secure which an attachment was made is satisfied, a subsequent alienation is not void under s. 240 Act VIII merely because the attachment has not been formally withdrawn.—12 W. R. 457.

31. The right of attachment after judgment exists for the purpose of realizing sums actually due under a decree, not of securing property for the realization of money that may become payable.—*Ib.*

32. The intention of s. 213 Act VIII is not that the notice of attachment should issue according to the register of a particular district, but that it should contain a description sufficient to identify the property in question.—12 W. R. 488, 18 W. R. 411.

33. A judgment-creditor, who has caused the property of his debtor to be attached prior to decree under s. 81 Act VIII, is bound, after decree, to attach the property anew before he can proceed against it in execution. The attachments mentioned in s. 270 refer to attachments after decree only, and not to attachments before judgment.—(F. B.) 13 W. R. F. B. 9.

Nor to an attachment made pending execution proceedings in the case of a decree for possession and mesne profits before final assessment of the mesne profits.—21 W. R. 66.

34. S. 237 Act VIII gives no authority to a Civil Court to dispose of claims to money in deposit with a Collector, nor does s. 242 to dispose of claims to money under attachment.—13 W. R. 301.

35. In execution of a process of attachment of moveable property issued by a Civil Court, a Nazir can remove any lock upon a door or from any receptacle in which the property is placed, and put his own lock thereon in order that he may keep the property in proper custody.—13 W. R. 339.

36. An estate does not cease to be under attachment merely by the appointment of a manager under s. 243 Act VIII.—13 W. R. 423.

37. A vesting order of the Insolvent Court does not prevail over a previous attachment made after decree, so as to give a purchaser from the Official Assignee priority over the attaching creditor or the power of interfering with rights acquired under the attachment.—(F. B.) 14 W. R. F. B. 33. *See* 15 W. R. 257, 17 W. R. 234.

38. An alienation which is null and void under s. 240 Act VIII, because made whilst an attachment was subsisting, cannot be validated by the removal of the attachment. —14 W. R. 25.

39. Where an attachment of money in the hands of a Deputy Collector was made by a Civil Court without any such direction as is enjoined by s. 237 Act VIII, that the money should be held subject to the further orders of the Court, the attachment was held to cease to be binding when once the suit was dismissed. —14 W. R. 101.

40. A decree is property within the description of "other property" in s. 205 Act VIII and is therefore liable to attachment and sale in execution. The mode of attaching the decree and the money due under it would be that laid down in s. 237.—15 W. R. 34.

41. A party attaching landed property in execution of a decree, is bound by a lease obtained for it prior to his attachment.—15 W. R. 75.

41*a*. The mere fact of attachment of a property does not destroy a judgment-debtor's right in that property.—15 W. R. 158.

42. An application, by way of motion, to discharge or get rid of an attachment, is not the proper form in which the acts done by a Receiver should be disputed.—15 W. R. 347.

43. An order may be passed under s. 243 Act VIII even in a case where a decree has been passed on a specially registered bond.—15 W. R. 477.

44. A Small Cause Court cannot, after attachment of a necessitous judgment-debtor's salary, allow him out of the money held in attachment a small sum for subsistence; nor can the High Court interfere in such a matter.—15 W. R. 534.

45. A Court cannot refuse to order attachment on the application of the decree-holder; and till such attachment is made, the Court cannot proceed, under s. 243 Act VIII, to appoint a manager.—16 W. R. 273, 17 W. R. 100.

46. Where plaintiff claimed priority of attachment under s. 270 Act VIII,—*Held* that he was bound to prove that he had obtained a written order under s. 235 and that he had published that order in the manner prescribed by s. 239. —17 W. R. 23.

47. There is nothing in Act VIII which exempts from attachment property to be found in the zenana of a judgment-debtor.—17 W. R. 86.

48. Under Act VIII, property may be attached without view to immediate sale. The process of attachment and the order for sale may be distinct and separate, and there may be complete execution of a decree under an attachment without an order for sale.—(P. C.) 17 W. R. 289.

49. Where lands are situate in other zillahs, Act VIII contemplates the issuing of separate orders subsequent to the attachment for the sale or other disposition of them, and allows the transmission of a decree with certificate to several Courts concurrently for execution. At the same time it would in any case be a right exercise of the discretion of any Court not to act on the power and to bind the decree-holder not to proceed to sale under all the attachments at once.—(P. C.) *Ib.*

50. To invalidate an attachment on the ground that no copy of the decree was sent (assuming that it could be so invalidated), it would be necessary to prove non-transmission; the maxim *omnia præsumuntur rite esse acta* must prevail until the contrary is shown.—(P. C.) *Ib.*

51. Where one decree-holder attached the house and another both land and house and both were sold together, although the former having taken out attachment first was entitled to be satisfied first, the latter was declared to share *pro ratâ* in the sale proceeds.—17 W. R. 474.

52. The salary of a Government officer (in this case a

PRACTICE (ATTACHMENT) (*continued*).

telegraph officer), which is due for post service, is a debt which may be attached under s. 236 Act VIII.—18 W. R. 124. *See also* 24 W. R. 446.

53. So also a pension where Act VI of 1819 is not applicable.—*Ib.*

54. On application by a judgment-debtor for attachment of money in deposit in a collectorate at the credit of the judgment-debtor, a Judge who is moved to apply to the Accountant-General for the purpose ought not to refuse on the ground that the money is confiscated to Government.—18 W. R. 189.

55. Where a Court orders attachment before decree of a defendant's property after it is satisfied that he is about to remove or dispose of the property with intent to obstruct or delay the execution of the decree, it must be presumed that there was good and sufficient cause for the plaintiff having moved the Court to do so, even though the suit should prove unsuccessful; and unless the contrary be established, damages cannot be claimed.—18 W. R. 440.

56. A landlord cannot attach everything in the ryot's possession which he considers liable to satisfy the rent; but he can treat the rent as a debt due and attach it as such.—18 W. R. 464.

57. If a manager appointed under s. 243 Act VIII does more than gather in the moneys due to the judgment-debtor and apply them to the satisfaction of the decree, he acts as the agent of the judgment-debtor and not properly as an officer of the Court.—19 W. R. 37.

58. Even a Receiver appointed by the Court in a civil suit to preserve property and keep it within reach of the Court until the final decree, can only exercise such powers and rights as the parties to the suit turn out to be possessed of when their rights are finally determined.—*Ib.*

59. Any judgment-creditor coming after the appointment of the manager under s. 243 and after the mortgage of the attached property by the judgment-debtor with the consent of all parties, may notwithstanding attach and sell what remains of the judgment-debtor's interest in the property.—*Ib.*

60. Moveable property sought to be attached, if in the hands of the Judge or the Judge's Court, must be attached as prescribed in the first part of s. 239, and a notice so sent is an effectual attachment, although it is refused by the Judge.—*Ib.*

61. The High Court set aside an order summarily removing a manager appointed under s. 243 Act VIII at the request of the decree-holder, and ordered that the properties subsequently attached should not be sold but placed along with the other properties in the hands of the manager.—19 W. R. 66.

62. The fact of a judgment-debtor's property being the subject of an existing suit is no hindrance to its being attached in execution; but it is in the discretion of the Court to order its sale at the fittest and most proper time.—19 W. R. 132.

63. On an application under s. 200 Act VIII, the Judge ordered the attachment of certain properties, and thereafter sent a precept to the Collector under Reg. V of 1827 and ordered him to hold the properties in question and two others in attachment, and to appoint a person for the due care and management of the same,—*Held* that Reg. V of 1827 was not intended to apply to any other cases of attachment of landed property than those provided for in the Regulations mentioned therein, and that the order was therefore made without jurisdiction.—20 W. R. 78.

64. An attachment of property without first requiring security according to s. 7 Reg. VII of 1825 is an irregularity which does not affect the jurisdiction of the Court or render the attachment void.—20 W. R. 133.

65. Where execution proceedings are struck off, the act means a complete termination of the case and the removal of any attachment therein; but the restoration of the proceedings does not necessarily imply restoration of attachment also.—21 W. R. 66. *See* 3*b*, 10, 21*a ante.*

65*a*. Where, upon a fictitious mortgage-bond concocted between the two defendants, one of them got a collusive decree against the other in the Tirhoot Court for a sale of plaintiff's property situate in the Sarun district, and in furtherance of this design plaintiff's property had been attached and ordered to be sold,—*Held* that if plaintiff had made the attachment of his property the principal ingredient in his cause of action and had sought to have the property protected, then the right jurisdiction in which such a suit should be brought was the — within which the property lay; but that as, instead of doing so, he had sought to set aside the bond and the decree as collusive and fraudulent, and as he had failed to show that he was directly affected under the bond and decree each of which was between other parties, he had no cause of action.—21 W. R. 266.

66. The rule in s. 270 Act VIII as to prior attachment is a mere rule of procedure by which the Courts are to be guided in determining questions between rival decree-holders, but was never intended to alter or limit the rights which a party may have by contract independently of the rules embodied in the Code of Civil Procedure.—22 W. R. 98.

67. Where a judgment of the Privy Council ordered execution for mesne profits to be taken out first against one defendant and only on failure to obtain satisfaction against the others,—*Held* that before the assets of the former had been exhausted, attachment could not issue against the property of the latter, even by way of a preliminary and protective step. The proper mode of making enquiry in such cases explained.—22 W. R. 104.

68. Where a Judge has made an order in the terms of s. 26 Reg. V of 1812 as modified by Reg. V of 1827, he is *functus officio* and it then lies upon the Collector, as manager and holder, to take at his own proper risk and upon his own responsibility everything that he finds to be part of the joint estate.—22 W. R. 212.

69. The possession of the Collector under an attachment made under the above Regulations is on account of all the parties interested in the estate; and in a suit in respect of it brought by one of them against the others, the cause of action arises after the withdrawal of the attachment.—22 W. R. 265.

70. Where a Judge was of opinion that an application for the appointment of a manager under s. 243 Act VIII was made only to put off payment of the debt,—*Held* that he was not wrong in exercising his discretion and refusing to appoint a manager.—23 W. R. 287.

71. Where an attaching creditor, dissatisfied with the share allotted to him in a distribution of sale proceeds under s. 270 Act VIII, brings a suit against the other attaching creditors, and claims to have made the first attachment, he is bound to include as defendants all who have shared in the distribution.—23 W. R. 431.

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,, Law (Act XI of 1859) 11, 24.
Time 8.
Under Tenures 8.
Witness 20.

Practice (Commissions).

1. Suit to be dismissed if plaintiff fails to appear before Commissioner appointed under s. 180. No appeal lies from such judgment by default, but application should be made for an order to set aside the judgment, and, if refused, an appeal will lie from order of refusal.—W. R. F. B. 1 (1 Hay 335, Marshall 139). *See also* Ameen 6, and 13 W. R. 415. 16 W. R., P. C., 28.

1. Instead of having accepted an unsworn report of a Mohurrir of the Court as evidence resulting from a local investigation, the proper course to pursue was to depute a professional and sworn Ameen to make the local enquiry.—Sev. 427.

3. If a local enquiry ordered by an Appellate Court for the ascertainment of *rates* disclose an excess *area*, the decree must follow the disclosure.—3 R. J. P. J. 128.

4. The High Court has discretionary power to grant or refuse applications made under s. 175 Act VIII for the examination by Commission of witnesses resident more than 100 miles distant from Calcutta.—1 Hyde 68.

5. A Commission for the examination of witnesses will be issued, even though the cause is entered upon the peremptory board of the day, if the issuing of such Commission is not calculated to prejudice the defendants or to subject them to loss or inconvenience.—1 Hyde 269.

6. The Court will not issue a Commission for the examination of an infant of tender years.—2 Hyde 152.

7. One Principal Sudder Ameen's order for a local investigation should be carried out before retrial of the case by his successor.—1 W. R. 102.

8. The direction of a local investigation is a mere matter of discretion in which no special appeal will lie of right.—1 W. R. 141, 196, 249 (3 R. J. P. J. 322); 5 W. R. 248; 10 W. R. 43; 12 W. R. 76.

9. The issue of a Commission for the examination of an absent witness, without notice to the opposite party, if not illegal, is objectionable.—3 W. R. 147.

So also as to a local investigation under s. 180 Act VIII. —12 W. R. 139.

10. In a suit for enhancement, a Court is not bound of its own motion to order a local investigation.—(F. B.) 3 W. R. (Act X) 153.

11. Where a Judge reverses a decree of the Principal Sudder Ameen, and remands the case for fresh local investigation by the Moonsiff, and subsequently authorises the Moonsiff to appoint a suitable officer, on whose report the Principal Sudder Ameen acts, the plaintiff cannot, on appeal to the Judge, object to such report as unauthorised, invalid, or illegal.—6 W. R. 61.

12. A local investigation under s. 180 Act VIII should only be ordered for the purpose of elucidating matters which cannot be gone into by the Court itself.—6 W. R. 324.

The Court cannot depute its functions to the Ameen.—17 W. R. 473 (*foot-note*).

13. A *taidnuvees* or apprentice who does occasional work as a copyist, is not an officer of Government who should be entrusted with the making of a local enquiry under s. 73 Act X.—6 W. R. (Act X) 81.

14. Where a local enquiry is necessary, a Collector should cause such enquiry to be made by a properly constituted officer according to s. 73 Act X.—7 W. R. 27.

15. A Magistrate is not bound to execute a Commission of a Small Cause Court directing him to take the evidence of prisoners in jail, in the absence of circumstances warranting the issue of such Commission.—7 W. R. 349.

16. S. 180 Act VIII makes it imperative on the Court to employ in the first instance the regular officer of the Court to hold a local enquiry; but not doing so is no ground of special appeal.—8 W. R. 6.

17. Where an application to have the evidence of witnesses residing beyond British territories taken, fails owing to circumstances beyond control, application to have other witnesses examined within British territories should be granted.—8 W. R. 448.

18. That the evidence was given in the absence of the other side, is not enough to make the deposition of a witness taken on Commission inadmissible.—10 W. R. 236.

19. A Deputy-Collector is competent to depute an officer of the Court to take evidence on Commission if the place where the witness is examined is within his jurisdiction. —*Ib.*

20. The kingdom of Ava is not the territory of a Native Prince or State in alliance with the British Government within the meaning of s. 177 Act VIII, there being no treaty of alliance between the two Governments.—10 W. R. 385.

21. If the evidence taken by a Commission issued under s. 178 is given on oath or affirmation, it will be admissible without consent of parties, upon proof of the facts necessary for that purpose under s. 179.—*Ib.*

23. An application to compel the attendance of a witness for examination by Commission should be made to the Judge executing the Commission within whose jurisdiction the witness is resident.—11 W. R. 468.

24. An *omedwar* or candidate for office, not being an officer of the Court, cannot be deputed for a local enquiry under s. 73 Act X, nor can his report be properly received as evidence.—13 W. R. 284.

25. A party who has not joined in a Commission is entitled to cross-examine the witnesses who are examined under the Commission.—14 W. R., O. J., 17.

26. Where a Commissioner took the evidence of witnesses when the last return day of the Commission had expired, the depositions of the witnesses were held not admissible in evidence in the cause.—*Ib.*

27. Reading s. 73 Act X with ss. 172 and 180 Act VIII, rough notes taken down by the officer holding a local investigation of what was said by witnesses whose depositions were not recorded, are not legal evidence, and the investigation so held is invalid.—14 W. R. 269.

28. An Appellate Court in India ought not to interfere with the result of a local enquiry except upon clearly defined and sufficient grounds, which must be expressed in its judgment.—(P. C.) 15 W. R., P. C., 20. *See also* 15 W. R. 423, 18 W. R. 452.

29. Where the deputation of a mohurrir to make a local investigation under s. 180 Act VIII was upheld and his report and the depositions taken by him were viewed as legal evidence.—15 W. R. 291.

30. A Judge has no power to order a Sub-Judge, whose judgment is before him on appeal, to go and inspect the locality and make a report; and such report cannot be treated as evidence. If further evidence is necessary, the procedure to be followed is that laid down in ss. 354 and 355 Act VIII, and it is competent to the Judge to order an Ameen or suitable person to make a local investigation under s. 180.—17 W. R. 303.

31. An application for the issue of a Commission under s. 175 Act VIII should be supported by some reason other than the mere distance of place of residence of the witness. If the witness is a stranger, a Commission will be right and reasonable; but not if he is a servant of the person applying.—20 W. R. 253.

32. The refusal of a Court to allow the deposition of a defendant taken by Commission to be taken in evidence, was held to be justified under s. 179 Act VIII.—22 W. R. 331.

33. When an enquiry has been made by a Commissioner under Act VIII, the Court to which it is reported ought not, unless it annuls the proceedings of the first enquiry, to order another on the same matter.—23 W. R. 93.

34. Where a Commission to examine a witness on behalf of defendant had been returned unexecuted, and the defendant's petition to have it sent a second time was refused by both the Lower Courts on insufficient grounds, the High Court in special appeal remanded the case for the issue of the Commission.—23 W. R. 457.

Practice (Commissions) (*continued*).

See Account 9.
Ameen.
Boundary 2, 17.
Costs 81.
Divorce 11.
Evidence (Documentary) 31, 48.
Land Dispute 36, 47.
Mesne Profits 55, 111.
Nazir 1.
Purdah-women 4.
Remand 8, 9.
Stamp Duty 55, 62.
Witness 50.

Practice (Criminal Trials).

1. An acquitted prisoner cannot be convicted on an amended charge without recommittal.—1 W. R., Cr., 40 (4 R. J. P. J. 117).

1*a*. To decide a case on the unsupported statements of prosecutor and prisoner, without recording the evidence offered on either side, is a clear error in law.—2 W. R., Cr., 47.

2. Trial or re-trial in the absence of the accused is a mere nullity.—3 W. R., Cr., 4 (4 R. J. P. J. 420). 8 W. R., Cr., 17.

3. Requirements of the law with regard to the trial by jury of a foreigner.—3 W. R., Cr., 14 (4 R. J. P. J. 572).

4. A Judge should not pass a lenient sentence when he differs from the jury, but should inflict such a sentence as he would have passed had he agreed with them.—3 W. R., Cr., 29.

5. Records of previous convictions should not be put in until the conclusion of a trial.—3 W. R., Cr., 38; 5 W. R., Cr., 67.

6. Although a Sessions Judge cannot release a prisoner on bail pending an appeal, he may suspend the sentence pending the appeal.—3 W. R., Cr., 57. *But see* Bail 1.

7. Time for taking technical objections to criminal charges.—5 W. R., R. C., 1.

8. Where a prisoner is acquitted of the offence charged, the Court ought not to order the property in respect of which the offence was charged to be given to the prosecutor.—5 W. R., Cr., 55.

9. A Sessions Judge can on appeal reverse a Deputy Magistrate's conviction, where the evidence is insufficient to establish a criminal offence against the prisoner.—5 W. R., Cr., 56. *See also* 20 W. R. 13.

10. A reference to proceedings in a former case declared to be irregular.—6 W. R., Cr., 2, 7; 7 W. R., Cr., 7: 12 W. R., Cr., 3, 73.

11. Evidence of wife. *See* Evidence (Oral) 24.

12. Where the evidence for the prosecution was not taken, the prisoner was held to have been illegally convicted.—6 W. R., Cr., 92.

13. Evidence of bad character is not admissible.—7 W. R., Cr., 7. *See also* 8 W. R., Cr., 11; 10 W. R., Cr., 17; 15 W. R., Cr., 37.

14. It is the duty of a Sessions Judge to sum up the evidence as recorded before him, and to state his own reasons for considering a prisoner guilty.—7 W. R., Cr., 25. *See* 9 W. R., Cr., 51.

15. An accused person has a right to be present at the proceedings before the Magistrate to whom the case has been referred by the Appellate Magistrate under s. 277 Act XXV of 1861.—7 W. R., Cr., 38.

16. When there is no evidence against a prisoner, the Judge should charge the jury for an acquittal, and not leave the jury to say whether the prisoner is guilty or not. —7 W. R., Cr., 39.

17. A Judge has no right to allude to the statement of a person who is not examined as a witness.—8 W. R., Cr., 11.

18. A Sessions Judge in appeal can quash an illegal conviction by an Assistant Magistrate for giving false evidence in a stage of a judicial proceeding.—8 W. R., Cr., 30.

19. Trial by jury ceases, in a district when the district ceases to belong to a division to which trial by jury has been extended; and consequently the Commissioner of Cooch Behar has no power to hold trials by jury in the Gowalpara District.—8 W. R., Cr., 39, 53.

20. Preliminary enquiries contemplated by s. 171 Act XXV of 1861 need not be conducted in the presence of the accused.—9 W. R., Cr., 3.

21. A Collector who entertains a charge of contempt under s. 168 Act XXV of 1861, should not try the case himself, nor, unless in very exceptional cases, give evidence before himself as Magistrate.—9 W. R., Cr., 13.

22. A Sessions Judge in trying an appeal has to look to the offence, as charged, of which the accused has been found guilty, and to determine whether it is proved or not. He has nothing to do with the form the offence may take, owing to subsequent events.—9 W. R., Cr., 65.

23. The fact of the accused having previously been a bad character should not be mentioned in the charge to the jury, but may be taken into consideration by the Judge in passing sentence upon conviction.—10 W. R., Cr., 39; 15 W. R., Cr., 37.

24. A Subordinate Magistrate was held to have acted correctly under s. 277 Act XXV of 1861 in referring a case, not to the Magistrate of the district, but to the Assistant Magistrate in charge of the sub-division to which he was attached.—11 W. R., Cr., 6.

25. The commitment and trial together of several persons charged with having given false evidence in the same proceedings, should be avoided.—11 W. R., Cr., 16.

26. Where a prisoner pleads guilty but goes on to say that he did not commit the offence with which he is charged, the plea is really one of not guilty.—11 W. R., Cr., 52.

27. A Deputy Magistrate, who has once made an order transferring a case for trial to the Magistrate, has no power to cancel the order and replace the case on his own file.—12 W. R., Cr., 18.

And so *vice versâ* a Magistrate cannot interfere with a case referred by him to a Deputy Magistrate without formally withdrawing the case from the Lower Court under s. 36 Act XXV of 1861.—12 W. R., Cr., 53; 16 W. R., Cr., 40.

28. S. 273 Act XXV of 1861 only empowers a Superior Magistrate to refer cases to a Subordinate Magistrate when the complaint is made to himself or before a Police Officer, but not cases where he himself takes cognizance of an offence.—12 W. R., Cr., 49. *See* 14 W. R., Cr., 1, 35; 17 W. R., Cr., 35; (F. B.) 18 W. R., Cr., 18.

29. Procedure for Magistrate, after taking up a case, to make it over for trial to another judicial officer.—13 W. R., Cr., 1; 14 W. R., Cr., 3; 20 W. R., Cr., 23.

30. Under s. 372 Act XXV of 1861, an accused should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close. Where, therefore, one witness for the prosecution was recalled after the prisoner had made his defence, and the prisoner had no opportunity of calling evidence with reference to that witness, the High Court quashed the conviction and ordered a new trial.—13 W. R., Cr., 15. *See also* 13 W. R., Cr., 36.

31. A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are committed for trial.—13 W. R., Cr., 50.

32. Where the accused pleads guilty before a Sessions Judge on a charge of murder, the Judge might either convict him on that plea of that charge, or proceed to try him on the evidence; but he cannot without trial convict the accused of culpable homicide not amounting to murder. —13 W. R., Cr., 55.

33. The Chief Executive Officer of a Non-Regulation Province is bound, with reference to ss. 445A and 445B Act VIII of 1869, to proceed under Act XXV of 1861, in the trial of offences punishable by a Court of Sessions, and must try with a jury or assessors even if one of the counts of the charge against the prisoners be in respect of an offence not triable by a Court of Sessions.—13 W. R., Cr., 59.

34. Competency of a Judge to try a case in which he is a witness or complainant.—13 W. R., Cr., 60; (F. B.) 17 W. R., Cr., 39; 25 W. R., Cr., 57.

Or in which he, as Magistrate, took an active part in the capture of the accused.—20 W. R., Cr., 76. *See also* 22 W. R., Cr., 75.

35. S. 426 Act XXV of 1861 was held not to apply to a

PRACTICE (CRIMINAL TRIALS) (*continued*).

case in which the accused charged with voluntarily causing hurt and with abetment of that offence was substantially acquitted by the Magistrate of the former offence (although no verdict of acquittal had been recorded) and convicted of the latter offence, and the Sessions Judge on appeal convicted the accused of the former offence and acquitted him of the latter.—13 W. R., Cr., 76.

36. A Magistrate was held competent, under s. 66 Act XXV of 1861, to make over a case to a Deputy Magistrate for trial, without recording the examination of the complainant.—14 W. R., Cr., 1, (*affirmed by F. B.*) 18 W. R., Cr., 18. *But see* 16 W. R., Cr., 40.

37. Where the High Court interfered with a Magistrate's discretion under s. 36 Act XXV of 1861 in the withdrawal of a case from a Subordinate Court to his own.—14 W. R., Cr., 12.

38. A Magistrate is not justified by s. 206 Act XXV of 1861 to take a person without any previous notice or summons from among the audience or attendant witnesses in open Court, and place him in the dock to be immediately tried upon a charge which had already been commenced to be entertained against other prisoners and on which evidence had already been given. That section applies to investigations preliminary to commitment for a subsequent trial and not to cases where the trial is actually being proceeded with.—14 W. R., Cr., 20.

39. Trial by jury of offences under the Registration Act is not legal; but where the unanimous verdict of a jury was approved of by the Judge, the conviction was not interfered with.—14 W. R., Cr., 32.

40. A Court of Session is competent and ought to proceed to the trial of a prisoner who is brought before it upon a charge exhibited by a Magistrate who is authorized to make a commitment, notwithstanding any irregularity or defect of form in recording the complaint.—(F. B.) 14 W. R., Cr., 34.

41. In the class of cases to which Chapter XXI (*qy.* Chapter XI) Act XXV of 1861 relates, the complaint or authorization of the Court before which or against the authority of which such offence is alleged to have been committed, is sufficient warrant for the commencement of criminal proceedings.—(F. B.) *Ib.*

42. A Magistrate cannot refuse a summons to a complainant, but is bound under s. 66 Act XXV of 1861 to examine the complainant on oath and pass orders on the case.—14 W. R., Cr., 36.

43. There ought to be but one Sessions record, which should be continuous and should contain accurately and consecutively the whole of the proceedings in the trial, including the examination of the accused.—14 W. R., Cr., 46. *See also* 15 W. R. 16.

44. Neither the Magistrate nor the Judge in appeal can interfere with a prisoner's right to have copies of all documents which he requires for his defence, by determining (otherwise than at the hearing) whether the documents were necessary or not.—14 W. R., Cr., 77.

45. Where there is no provision in the Penal Code, and any other law (such as the Breach of Trust Law, Act XIII of 1850) provides punishment for an offence, any person committing such offence may be tried under the latter.—14 W. R., Cr., 80.

46. Where an offence is committed against a Court of first instance, the Appellate Court to which it is subordinate is competent to sanction a prosecution under Chapter XI Act XXV of 1861.—15 W. R. 352.

47. An accused should *plead* by his own mouth and not through his Counsel or pleader, though his Counsel or pleader may at the proper time address the Court on his behalf.—15 W. R., Cr., 42.

48. The Magistrate's record of the proceedings prior to commitment should always be forwarded to the High Court. —15 W. R., Cr., 67.

49. A jury may be satisfied with a minimum of proof, and it is beyond the power of the High Court in such cases to interfere with its verdict; but when there is nothing which can, if believed, amount to proof, the case should not be put to the jury at all, as a verdict of guilty cannot, under such circumstances, be sustained.—16 W. R., Cr., 19.

50. Duty of Judge with regard to evidence.—16 W. R., Cr., 36.

51. Case in which the High Court permitted a Magistrate to be examined.—16 W. R., Cr., 49.

52. The form of an accusation by a District Superintendent of Police under s. 193 Penal Code does not preclude a Magistrate from framing the charge under s. 177; the sanction of the District Superintendent, required under s. 168, Act XXV of 1861 to give the Magistrate jurisdiction, need not be express but may be implied.—16 W. R., Cr., 67.

53. The plea of *not guilty* of the offence stated in the charge raises no question as to the authority of the officer to prefer that charge.—17 W. R., Cr., 36 (*foot-note*).

54. S. 426 Act XXV of 1861 was held to apply to a case where the Sessions Judge amended a charge after the case had been decided, instead of directing a new trial.—18 W. R., Cr., 8.

55. Where a Magistrate removed a case to his own file from that of the Deputy Magistrate after the latter had issued warrants upon the footing of the complaint, and immediately suspended the warrants and dismissed the complaint under s. 67 Act XXV of 1861,—*Held* that the Magistrate ought to have proceeded with the case as from the stage at which he found it, and that he had committed a material error by not doing so.—19 W. R., Cr., 28.

56. It is not irregular in a warrant case for a Deputy Magistrate to take the evidence of the complainant and certain witnesses on behalf of the prosecution in the absence of the accused. All that the accused has a right to expect after the charge has been framed is that the complainant and witnesses should be recalled for the purposes of cross-examination.—21 W. R., Cr., 61.

57. A Magistrate, in the exercise of the discretion conferred on him by s. 192 Act X of 1872, ought to have good reason for allowing witnesses for the prosecution to be interposed in the midst of the case of the accused.—*Ib.*

58. The High Court, under ss. 64 and 69 Act X of 1872, directed the preliminary investigation in a case in which the accused was charged with criminal breach of trust, to be held in Calcutta, where the offence charged was partly if not wholly, committed.—22 W. R., Cr., 6.

59. A prisoner whose trial is supplemental to that of others, is entitled to as full and complete an investigation of all the facts of the occurrences upon which the charge depends as if no previous trial of other persons for participation in these occurrences had ever taken place.—22 W. R., Cr., 38.

60. An Advocate of the High Court may appear on behalf of the prosecution in the Court of Sessions and conduct the prosecution without being specially empowered in that behalf by the Magistrate of the district under s. 235 Act X of 1872.—23 W. R., Cr., 14.

61. If an accused has not his witnesses present, the Judge should, under s. 251 Act X of 1872, if he sees ground for proceeding, first call upon him for his defence, and then postpone the case.—23 W. R., Cr., 58.

62. The Magistrate of the District should not himself try a case in which he instituted the prosecution as Collector.—24 W. R., Cr., 1.

63. The Magistrate of the District has authority to call up to his own Court any criminal case without limitation as to the stage of proceeding at which it may be called. If the Magistrate, having in the exercise of his authority withdrawn any case, finds that it did not come within the jurisdiction of his magistracy, he would not merely be competent but bound to refuse to proceed further with the case.—24 W. R., Cr., 4.

64. A Court of Sessions is not at liberty under s. 249 Act X of 1872 to ground its judgment on the depositions taken by the Magistrate without taking the examinations of the witnesses afresh.—24 W. R., Cr., 11.

65. S. 328 Act X of 1872, which allows a Magistrate to decide a case on the evidence partly recorded by his predecessor and partly by himself, only applies when the Magistrate, after hearing part of the evidence in a case, ceases to exercise jurisdiction and is succeeded by another who has and who exercises jurisdiction in such case; and so s. 329 only applies when the Magistrate is unable to complete the enquiry himself. When, however, a case under trial is removed under s. 47, the whole proceedings must commence *de novo* as provided by s. 46.—24 W. R., Cr., 53.

66. The omission of an Appellate Court to fix a reason-

PRACTICE (CRIMINAL TRIALS) (*continued*).

able time for the appearance of the appellant or his Counsel, as required by s. 278 Act X of 1872. is an error which invalidates its proceedings.—24 W. R., Cr., 60.

67. An accused person called on to answer to a specific charge cannot be convicted on an entirely different charge without previous notice of the offence imputed to him, and without being afforded an opportunity of meeting the accusation.—26 W. R., Cr., 8.

See Appeal 75, 89, 90, 123, 124.
Assessors.
Autrefois Acquit.
Bail 1.
British Subject 3.
Charge.
Commitment 3, 7, 8.
Contempt of Court 7, 8.
Criminal Proceedings.
Detention 5.
Error 3, 6.
Evidence 44, 46, 59, 67, 80, 88.
,, (Admissions and Statements) 14, 15, 16, 19, 20, 23, 25, 44.
False Evidence.
Fine 3.
High Court 109, 115, 116, 125.
Insanity 7.
Irregularity 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 18.
Jurisdiction 200, 274, 371.
Jury.
Lunatic, 12, 13, 22, 23.
Mookhtar 6.
New Trial 3.
Pardon 2, 3, 4, 5.
Practice (Review) 37, 38.
Prisoner 3.
Prosecutor 1.
Right of Appeal 2, 3.
Robbery 3.
Splitting 1.
Summary Trial.
Withdrawal of Complaint.
Witness 12, 14, 19, 35, 44, 57, 83.

Practice (Execution of Decree).

1. According to ss. 10 and 11 Act XLII of 1860, a decree should be satisfied out of the moveable property of the debtor in the first instance, and a certificate ought not to be granted under s. 11 until the Court is satisfied that there is not sufficient property within the limits of the Court's jurisdiction.—S. C. C. 55.

2. In a suit for arrears of rent the decree should not direct in what mode execution should issue, but leave the mode of realization to be settled in execution.—1 Hay 113 (Marshall 48).

3. The mistake of a nazir or other Court officer, in paying the proceeds of the execution to a person not duly authorized to receive the same, does not make the execution-debtor liable to further proceedings in execution by the judgment-creditor.—1 Hay 131 (Marshall 59).

4. Where a decree-holder made frequent endeavours to obtain execution of his decree against one of the heirs of the judgment-debtor who was in actual possession of the judgment-debtor's property, he was held to have taken effectual means to keep alive the suit in execution; and before his present application can be thrown out as barred by limitation, it must be shown that the heir, with the full knowledge of the decree-holder, had been in sole possession of the judgment-debtor's property for more than 12 years prior to the application.—1 Hay 458.

5. S. 6 Act VIII of 1859, authorising "a District Court to withdraw any suit instituted in any Court subordinate to such District Court, and to try such suit itself, or to refer it for trial," etc., does not justify an order by the District Court for the calling up of execution cases from the file of the Subordinate Court, and for the appointment of a manager.—1 Hay 459 (Marshall 195), 21 W. R. 196, 23 W. R. 1. *See* 13 W. R. 222.

6. After a decree had been satisfied, and the case struck out at the request of the decree-holder, he discovered that, by resorting to a different mode of calculation, he might have recovered more under the decree. The Court refused to re-open the matter, or to allow execution for the difference. —1 Hay 587 (Marshall 211).

6*a*. Where liability on a bond is denied by the sons of the deceased obligor on the ground of their not having succeeded to any property left by their father, the question cannot be left to be determined at the time of execution of decree.—2 Hay 84.

7. The consent of the decree-holder is not necessary to the appointment of a manager by the Court under s. 243 Act VIII, but the manager cannot, under s. 270, realize any claims not based on judicial awards.—2 Hay 112 (Marshall 261). *See* 10 W. R. F. B. 5.

8. Where a decree of one Court is transmitted to another for execution, the latter Court cannot entertain any objection to the decree or to the amount thereof or to the amount mentioned in the order for execution, but must merely execute the decree.—2 Hay 115 (Marshall 244). *See* 10 W. R. 95, 13 W. R. 330.

9. A decree-holder who, having a joint decree against several persons, deals with some of them as severally liable for certain respective shares, cannot execute the same decree as a joint one against the remaining judgment-debtors.—2 Hay 297.

10. A judgment-debtor is justified in withholding the money decreed when the decree itself is attached by a judgment-creditor of the decree-holder. The decree-holder, when a mere speculative purchaser, is not entitled to interest. —2 Hay 301.

11. Where one of several judgment-debtors purchases the decree against them, he cannot, in execution thereof, realize from any one of them more than his own particular quota of contribution.—2 Hay 459 (Marshall 339). *See* 59, 110 *post*.

12. Where an arrangement for the liquidation of the debts of a judgment-debtor is allowed by a Court under s. 244 Act VIII of 1859, the attaching-creditor is entitled to preference. -2 Hay 537 (Marshall 413).

13. The Court will not interfere to stay execution upon the application of a person, not a party to the suit, who claims immoveable property liable to be taken under the decree. The remedy of such a person is under s. 230.—Marshall 478.

14. Execution may be stayed, pending an appeal to the Privy Council, upon the decree-holder's failure to give sufficient security, a like security being thereupon taken from the appellant.—2 Hay 674.

15. Between two rival decree-holders, he who has taken out attachment is entitled to priority.—2 Hay 675.

16. A party disturbed in his possession by execution proceedings must sue separately. -Sev. 562.

17. The taking of security or not is discretionary in granting execution of decree.—Sev. 698.

18. Under s. 212 Act VIII of 1859 it is not necessary to file a copy of the decree in order to procure execution thereof in the Court which passed it.—Sev. 880, 9 W. R. 362, 10 W. R. 144, 11 W. R. 28. 271.

19. Construction 1129 is strictly applicable where the lands sued for were actually taken in execution of a former decree and no question of identity remained to be decided. —W. R. Sp. 208.

20. In a case of execution of a decree of 12 years' standing, the presumption is that the usual notices were served unless evidence to the contrary can be produced.—W. R. Sp. 314 (L. R. 92).

21. After the striking off of an execution case, the omission to re-issue the processes required by law, on the admission of a third party as decree-holder, is not a material irregularity in the case.—W. R. Sp. 359.

22. Where the records of a case are destroyed, plaintiff may prove his first decree and get the execution of it; but failing to do so, he cannot bring a second suit for the same subject-matter.—W. R. Sp. 378 (L. R. 152).

PRACTICE (EXECUTION OF DECREE) (*continued*).

23. A regularly executed decree cannot be over-ridden or annulled by a miscellaneous petition. If the judgment-debtor wishes to proceed against the decree-holder, he must do so in a regular suit.—W. R. Sp., Mis., 31.

24. A judgment-creditor is entitled to take out execution without giving security, and the judgment-debtor cannot stay a sale without giving security.—W. R. Sp., Mis., 42.

25. When execution of decree fails or is set aside and the proceedings regarding that execution are taken off the file, the whole suit is not necessarily discontinued thereby, nor are the further proceedings for the same purpose to be considered as taken in a new suit.—(P. C.) 5 W. R., P. C., 7 (P. C. R. 488).

26. The High Court in the exercise of its civil jurisdiction has not the power to execute its own decree or serve its own process out of the local limits of such jurisdiction. —1 Hyde 136. *See* 10 W. R. 349.

27. The words "otherwise as the case may be" in s. 212 Act VIII mean that the mode of execution is to be adapted in each case to the nature of the particular relief sought to be enforced under the decree.—1 Hyde 158.

28. Effect of failure to serve necessary process before proceeding to sell in execution of a summary decree.—1 W. R. 232.

29. When plaintiff, in execution of a decree, is met by defendants claiming as being mortgagees in possession after foreclosure and under a decree thereupon passed more than 12 years before suit.—1 W. R. 257.

30. Effect of striking off a case in execution with regard to attached property.—1 W. R. 318.

31. Party applying for execution as representative of deceased decree-holder must be required to prove his right to represent him.—1 W. R., Mis., 10; 21 W. R. 31.

32. Mode of procedure in execution of a joint-decree against two debtors.—1 W. R., Mis., 14.

33. If a decree be executed by other than the decree-holder, the remedy lies in application for a review to the Court granting execution.—1 W. R., Mis., 23.

34. The Court passing a decree cannot interfere with the order of the Court asked to execute it. If the latter rules that execution is barred by limitation, an appeal will lie from that order.—2 W. R., Mis., 17.

The order of the Court to which a decree has been transferred for execution, which is open to appeal, if any such order is open to appeal, must be an order made by the Court in the course of the actual execution of the decree.—21 W. R. 292.

35. A decree-holder entitled under his bond to proceed against any property belonging to his judgment-debtors, upon the attachment of certain property of theirs, filed a petition praying that such property, if sold, might be sold with notice of his lien upon it,—*Held* that the petition was neither an election by the decree-holder to go against such property only, nor an estoppel against his proceeding against the other property.—2 W. R., Mis., 17.

36. Procedure by Small Cause Courts, under ss. 19 and 20 Act XI of 1865, against immoveable property if the sale of moveable property has not satisfied the decree.—2 W. R., S. C. C., 5 (S. C. C. 120). *See* (F. B.) 9 W. R. 175.

37. A suit may be brought for the removal of an obstruction (*e.g.*, a fraudulent conveyance) to the execution of a decree.—3 W. R. 20.

38. Where the procedure to be followed in the execution of a decree for immoveable property in the occupancy of a ryot, was held to be that prescribed by s. 224 and not s. 230 Act VIII.—3 W. R. 48. *See* 11 W. R. 191.

39. A decree-holder cannot, after selling his decree, sue out execution upon it.—(F. B.) 3 W. R. 90. *See also* 7 W. R. 360.

40. The holder of a decree against a deceased person should proceed against the property of the deceased before attaching the private property of the deceased's widow.—3 W. R. 120.

41. When an execution case has been struck off without execution being ordered against the heirs, notice under s. 216 Act VIII should be re-issued before execution is taken out.—*Ib.*

42. Damages may be claimed when a decree-holder has omitted to do what he is legally bound to do.—*Ib.*

43. A decree transmitted to, and struck off by, another Court than the Court where it was obtained, can only be sought to be revived in the latter Court.—3 W. R., Mis., 5. *See* 121, 172 *post.*

44. A Court cannot prescribe to the decree-holder what course he is to take for the realization of his claim, or what property he is to attach.—3 W. R., Mis., 16. *See also* 13 W. R. 9.

45. A decree-holder was allowed to execute his decree without security, notwithstanding that his debtor had appealed to the Privy Council from an adverse decision in another suit.—3 W. R., Mis., 20.

46. Moveable property beyond jurisdiction of a Small Cause Court is not liable to be taken in execution.—3 W. R., S. C. C., 7 (S. C. C. 136). (*Over-ruled*) *See* (*F. B.*) 9 W. R. 175.

47. The procedure prescribed by s. 229 Act VIII is applicable to a case in which, though the decree was passed before that Act came into operation, execution was taken out afterwards. Under this section, a *bonâ fide* claimant other than the defendant, obstructing the execution of the decree, must be regarded as one of the parties to the suit, and an appeal therefore lies from an order passed in favor of the *bonâ fide* claimant.—4 W. R. 82.

48. Reading ss. 235, 239, and 250 together, process of attachment and sale, in regard to immoveable property, should be issued successively; but if issued simultaneously, and the attachment has been made *bonâ fide*, and the sale-proclamation issued as required by law, with an interval of 30 days between it and the sale, such irregularity is not a sufficient ground for setting aside the sale, as no material injury can accrue to the debtor thereby.—4 W. R., Mis., 12. *See* 8 W. R. 9.

49. Under s. 215 Act VIII, as well as s. 15 Act XXIII of 1861, it is not essential that the decree itself should be filed, but only certain particulars under s. 212 Act VIII.—4 W. R., Mis., 15. *See also* 10 W. R. 144, 11 W. R. 271, 16 W. R. 25.

50. A decree-holder is not prohibited, at the time of sale, from releasing a portion of the property advertised, should he have grounds for doing so.—4 W. R., Mis., 17.

51. A party cannot be said to be acting *bonâ fide* when he applies to a wrong Court for the execution of a decree.—4 W. R., Mis., 19.

52. A judgment-debtor may, at any stage of the execution proceedings, object to pay more than the decree awarded, notwithstanding his having on previous executions made payments in excess of the decree under a mistake.—4 W. R., Mis., 20.

53. Property substantially conveyed for the benefit and support of a judgment-debtor and his family, is liable for his debt, even though it was purchased in the name of his son.—5 W. R. 43.

54. In a suit brought under s. 230 Act VIII, the real question to be tried is whether the objector has a better title to the property in dispute than the decree-holder.—5 W. R. 224. *See also* 3 W. R. 213; 8 W. R. 477; 11 W. R. 146, 197. *But see* 11 W. R. 255 and 161 *post.*

55. A person who has lost her right to appeal from an order rejecting her objection and directing execution of decree to proceed, is not entitled to re-open a question already decided.—5 W. R., Mis., 14.

56. A Court to which a decree is referred by another Court for execution, has jurisdiction under s. 288 Act VIII to decide that the decree-holder's right to execute his decree has lapsed by limitation.—5 W. R., Mis., 14. *See also* 6 W. R., Mis., 118; 7 W. R. 19. (*Affirmed by F. B.*) 10 W. R. F. B. 10, 11 W. R. 430.

But the question of limitation must be one arising antecedently to the date of transfer upon facts which came out in the course of execution, and not one which could have been heard and determined by the Court which passed the decree.—21 W. R. 292, 330.

57. Lower Court must give reasons for accepting on remand, as sufficient, security which it had before remand rejected as insufficient, tendered by the decree-holder to take out execution in a case appealed to the Privy Council.—5 W. R., Mis., 12.

58. The Court executing a decree has no discretion to order the decree-holder to proceed first against one debtor, and afterwards (if his debt should remain unsatisfied) against the other debtors.—5 W. R., Mis., 44.

59. A joint debtor who satisfies the entire decree may

PRACTICE (EXECUTION OF DECREE) (*continued*).

sue his co-debtors for contribution; but he cannot purchase the decree and execute it against them, such a purchase operating as a satisfaction of the decree.—5 W. R., Mis., 46. *See* 11 *ante* and 110 *post*.

So held in the case of a *benamee* purchaser of a mortgage-decree by the judgment-debtor.—24 W. R. 359.

60. A judgment-debtor cannot object to the share which one or more decree-holders may claim under s. 207 Act VIII. —5 W. R., Mis., 58.

61. A purchaser from the defendant after decree is not a third party within the meaning of s. 230 Act VIII.—6 W. R. 149.

62. A person holding several decrees against the same debtor may attempt to enforce them all against the same property. If the opposition to his claim is well founded, he cannot do this successfully, and there is a short and simple mode by which the attachment may be set aside, under s. 246 Act VIII; and if the decree-holder acts vexatiously, the Court can punish him by compelling him to pay the costs of the applicant.—6 W. R. 239.

63. Where a judgment-debtor, by part payment, obtains postponement of the day of sale, by consent of the decree-holder, on condition that the attachment should continue, a mere formal entry on the record striking off the case is of no consequence.—6 W. R. 291.

64. A decree for rent under Act X may be passed with a proviso that it should be executed by endorsing the amount on a bond.—6 W. R. (Act X) 47.

65. The High Court cannot, under s. 36 Act XXIII of 1861, direct the Lower Courts to take security in case of execution, when no appeal has been preferred.—6 W. R., Mis., 15.

66. S. 15 of the same Act does not authorize a Judge to reject an application for the execution of a decree on the ground of an irregularity in form. Procedure to be observed in such cases.—6 W. R., Mis., 15.

67. A joint decree cannot under s. 207 Act VIII be executed as a several decree against the different defendants in respect of their proportionate shares.—6 W. R., Mis., 40, 64; 7 W. R. 10; 15 W. R. 159. *See* 11 W. R., 188.

68. When a case is transferred by one Court to another for execution, and the proceedings on the application for execution have been struck off for default, the Court which passed the decree, and not the Court to which the decree was transferred for execution, must be applied to for a fresh issue of execution.—6 W. R., Mis., 47. *See* 121 *post*.

69. Under s. 203 Act VIII, a decree against the representatives of a deceased person can only be executed against the property of the deceased which has come into their hands, so long as they have rightly administered the estate. —6 W. R., Mis., 48, 116. *See also* 8 W. R. 161; 10 W. R. 199; 12 W. R. 177, 233, 517; 14 W. R. 362; 15 W. R. 285.

70. Under s. 362 Act VIII, a Zillah Judge cannot send his own decrees to a Principal Sudder Ameen for execution. —6 W. R., Mis., 51. *But see* 9 W. R. 163.

Nor under s. 8 Act XXV of 1837.—17 W. R. 45.

71. One who has a decree for possession of a share of lands jointly with others, is not entitled, under s. 223 Act VIII, to obtain exclusive possession of any specific portion of the lands.—6 W. R., Mis., 59.

72. Execution of joint decree by one or more of several decree-holders.—*See* Limitation (Act XIV of 1859) 177. *See* 122 *post*.

73. A person against whom execution has once been duly issued as representative of a deceased person, cannot dispute his representative character on the occasion of any subsequent issue of execution against him as representative. —6 W. R., Mis., 61. *See* 20 W. R. 280.

74. In the absence of any order in a joint decree awarding particular sums to each of the decree-holders, one decree-holder cannot be allowed to take out execution of such portion of the decree as he may consider due to himself.—6 W. R., Mis., 76.

75. Service of notice under s. 216 Act VIII, effected by sticking it up on the door of the judgment-debtor's house, even if defective, is a *bonâ fide* proceeding under s. 20 Act XIV to enforce the decree.—6 W. R., Mis., 97. *See also* 9 W. R. 330; 17 W. R. 389; 23 W. R. 31.

76. In cases falling within s. 216, a judgment-creditor should apply for the execution of the decree and not for the issue of a notice; it is the duty of the Court to issue the notice.—(F. B.) 6 W. R., Mis., 98.

77. Until the debtor receive a written notice under s. 236 Act VIII, he can pay his debt to his creditor and is not bound to enquire whether or not his creditor is entitled to receive the money.—7 W. R. 10.

78. With reference to ss. 203 and 210 Act VIII, execution cannot issue against the estate of a deceased person if there is no one representing it.—7 W. R. 52. *See* 10 W. R. 199.

79. A decree cannot be executed against a person who, though originally named as a defendant in the suit, was not named in the decree as one of those against whom the decree was given.—7 W. R. 62.

80. When a Principal Sudder Ameen's Court was abolished after passing a decree, it was held, with reference to s. 362 Act VIII, that the decree might be executed in the Judge's Court to which the case had been transferred, notwithstanding the re-establishment of the Principal Sudder Ameen's Court, the latter not being the Court which passed the decree.—7 W. R. 124. *See* 8 W. R. 9.

81. Under ss. 102, 103, and 208 Act VIII, where a plaintiff in a suit died and the defendant was one of his representatives, the other representatives were held not debarred from executing the decree according to their rights.—7 W. R. 136.

82. Receipt of rent from a tenant subsequent to a decree for his ejectment passed under s. 78 Act X, renders execution of that decree impossible.—7 W. R. 142. *See* 10 W. R. 345.

83. S. 208 Act VIII puts a party to whom a decree is transferred into the position of the original decree-holder, and entitles him to have the decree executed as if application were made by the original decree-holder.—7 W. R. 205, 22 W. R. 235.

84. When a property is sold in execution of a decree subject to a lien under a previous decree, the purchaser cannot appear in the execution proceedings taken by the holder of such previous decree, seeing he was no party to the decree.—7 W. R. 221.

85. Where an attachment is made under s. 235 Act VIII, the only further process to bring the property to sale is the issue of the proclamation of sale; if the property be not within the jurisdiction of the Court whose duty it is to execute the decree, the course to be followed by the decree-holder is that prescribed by s. 285 *et seq.*— 7 W. R. 267.

86. A person who has filed a petition in a suit, stating that all the interests of the judgment-debtor have been transferred to him, and afterwards opposes all attempts at execution, becomes liable as defendant and execution can be issued against him.—7 W. R. 368.

87. A stranger cannot (save with decree-holder's consent) so deal with a judgment-debtor as to acquire an interest in the suit, which will enable him to prevent execution, without rendering himself liable to be put upon the record as a judgment-debtor.—*Ib.*

88. Where plaintiff in endeavouring to obtain possession of land decreed to him, and to pull down buildings, was opposed by defendant, and on applying to the Court executing the decree, was referred to a fresh suit on the ground that the decree was silent about the demolition of buildings,—*Held* that he should have appealed against such order as a matter to be determined in execution, and that no fresh suit lay.—7 W. R. 372.

89. Separate applications to execute the same decree do not constitute separate causes or suits. Thus when a Judge, *ex rei necessitate*, executes the decree of a Principal Sudder Ameen, he is at liberty to carry out the execution to whatever extent may be necessary.—8 W. R. 9. *See* 7 W. R. 124.

90. Where execution has been set aside *in toto* after being proceeded with to a certain point, the property cannot be considered as still under attachment for the benefit of the decree-holder.—8 W. R. 49, 415.

91. Procedure to be observed (under ss. 224, 225, and 227 Act VIII) where, while execution of decree is going on against immoveable property, the decree-holder alleges that he is obstructed in getting possession of certain lands included in the decree.—8 W. R. 79.

92. S. 284 makes no express provision for decrees which can be partly executed within the jurisdiction of the Court

PRACTICE (EXECUTION OF DECREE) (*continued*).

which passed it; and there is nothing to prevent a plaintiff from executing his decree in the first instance, as far as he can, in that jurisdiction, and afterwards proceeding to carry it into another.—8 W. R. 80.

93. A Mofussil Small Cause Court has no jurisdiction to execute a decree against Government. If the Court should attempt to do so, the plaintiff who applied for execution would be liable to be sued for damages.—8 W. R. 88.

94. Where execution of a decree against A is, on his death, taken out against his heirs, and B applies to be substituted as defendant on the ground that A was a *benamee* holder for him, A's heirs are liable to the extent of any assets that may have come into their hands.—8 W. R. 101.

95. When once a joint decree has been given, that decree ever after remains a joint decree, any act or conduct of the decree-holder notwithstanding.—8 W. R. 132.

96. Procedure to be observed for the execution of a decree against the legal representative of a deceased person.—8 W. R. 195.

97. The petition of an applicant showing cause under s. 217 Act VIII is not required to be verified.—8 W. R. 200.

98. Where the liability is joint and several, the decree-holder may proceed against any of the joint defendants he may elect, who would be free to recover from his co-defendants in a suit for contribution.—8 W. R. 201.

99. A Principal Sudder Ameen may, under s. 290 Act VIII, stay the execution of a decree of the High Court on the original side, in order to allow judgment-debtor to apply for a new trial, on the ground that the decree had been obtained *ex-parte* without his knowledge.—8 W. R. 202.

100. Where a mother, having the beneficial interest in testator's property till his wife comes of age, recovers rent on her own account, a decree against her is personal, and the wife's property cannot be sold in execution of such a decree.—8 W. R. 217.

101. According to s. 205 Act VIII, the right of a Hindoo son to succeed to his father's share by survivorship cannot be sold in execution.—8 W. R. 253.

102. Under s. 15 Act XXIII of 1861, if an application for execution corresponds with the terms of a decree, the Court is bound to admit it.—8 W. R. 277.

103. The Court may in its discretion refuse execution against the person and property at the same time, and may also refuse execution against the person when, under s. 15 Act XXIII of 1861 or s. 19 Act XI of 1865, application for immediate execution is made verbally at the time of passing the decree; but when the application is made in writing, in proper form, after decree, the Court is bound to issue execution according to the nature of the application.—8 W. R. 282. *See* 17 W. R. 165.

104. The attachment of immoveable property by a Court other than that which passed the decree before the decree has been sent to it for execution, vitiates the sale subsequently made of that property as not according to s. 285 Act VIII.—8 W. R. 310. *See also* 9 W. R. 388, 10 W. R. 137.

105. The discretion vested in a Court by ss. 200 and 201 Act VIII, to order execution against the person or property of the judgment-debtor, should be very carefully interfered with.—8 W. R. 319. *See* 8 W. R. 282.

106. A plaintiff not executing a decree for ejectment for some months, cannot recover damages for the period between institution of suit and execution of decree.—8 W. R. 501.

107. Under s. 47 Act XI of 1865 and s. 286 Act VIII, if a Small Cause Court cannot execute a decree for moveable property within its own jurisdiction, it may (notwithstanding ss. 19 and 20 Act XI) send the decree for execution to another Court within whose jurisdiction the property lies; if the Court to which it is sent be not a Court in the same district, the decree should be sent to the principal Court of original jurisdiction in the district in which it is intended to be executed.—(F. B.) 9 W. R. 175. *See also* 18 W. R. 123.

108. Under s. 282 Act VIII, after a debtor has been arrested in execution of a decree and discharged at the request of the creditor, his personal property may be taken in execution under the same decree.—(F. B.) 9 W. R. 178.

109. Execution cases in which a sale or other proceedings are stayed for a fixed period at the request of the debtor, and with the consent of the decree-holder, should not be struck off till that period has expired; and if struck off for the convenience of the Court by an order which provides for the continuance of the attachment, sale may follow within the said period without a fresh attachment.—9 W. R. 205.

110. If one judgment-debtor satisfies the judgment-debt and takes an assignment of it, he cannot enforce it by execution against his co-debtors; his only remedy is to sue them for contribution.—(F. B.) 9 W. R. 230. *See also* 15 W. R. 372, 23 W. R. 95, 24 W. R. 359.

111. Where a Civil Court refuses to execute a decree of adjudication according to conditions of compromise, the applicant should appeal from order of refusal, and not proceed by a regular suit.—9 W. R. 296.

112. The Court in which the decree was passed should endeavour to execute it first; and it is only when that Court cannot execute its own decree that it should send it to another Court for execution under s. 284 Act VIII *et seq.*—9 W. R. 346. *See* 19 W. R. 434.

113. Where a judgment-debtor contends that the balance due on a decree of the High Court transmitted for execution under s. 284 Act VIII is less than that for which execution is sought, the Judge has no jurisdiction to enquire into the question, but may, under s. 290, stay execution pending a reference to the High Court.—9 W. R. 361.

114. Where a Judge executes a decree against a person who holds another decree of his own Court, he should appoint a manager to realize that decree, and not sell it in execution.—9 W. R. 372.

115. The exemption by a Lower Appellate Court of a particular judgment-debtor from liability, even though erroneous, cannot be called an act done or order made without jurisdiction under s. 35 Act XXIII of 1861, and cannot be dealt with by the High Court under 24 and 25 Vic. c. 104 s. 15.—9 W. R. 386.

116. A purchase at a sale in execution made by a Court other than the Court passing the decree, but made without any of the formalities required by law being taken, is void as against a subsequent purchaser in execution who has gone through the regular process.—9 W. R. 388. (*Reversed on appeal by P. C.*) *See* 17 W. R. 289.

117. Execution of a decree will not be stayed under s. 338 Act VIII, merely because security is given, but good cause for stay of execution must be shown.—(F. B.) 9 W. R. 448.

118. The purchaser of an under-tenure sold for arrears of rent under s. 105 Act X, being no party to the suit, cannot plead limitation against a decree-holder seeking to execute his decree against it. He can only be heard under s. 229 or 230 Act VIII.—9 W. R. 486.

The question at issue in such a case is, which of the parties is entitled to possession, and whether the tenure was sold subject to previous incumbrances.—12 W. R. 460.

119. The Court is not bound to grant a second application for execution as a matter of course, but should enquire why the first was abortive, and should be satisfied that its failure was not owing to the default of the applicant.—9 W. R. 527. *See* 17 W. R. 165.

120. A decree in one suit in which no reference is made to a decree in another suit is no bar to the execution of such other decree.—9 W. R. 596.

121. As soon as a copy of the decree which is sent for execution to another Court is filed under s. 286 Act VIII in the Court to which it is transmitted, it has the same effect as a decree of that Court; and by s. 288 that Court is to proceed to execute it according to its own rules in the like cases.—(F. B.) 10 W. R. F. B. 46.

122. Execution of a joint decree may be taken out, under s. 207 Act VIII, by the survivors of several decree-holders for the benefit of all interested.—10 W. R. 95, 11 W. R. 421. *But see* 13 W. R. 244.

123. A mere privately executed endorsement, unregistered and unproved, is no evidence of the transfer of a decree.—10 W. R. 144.

124. Where a decree-holder, in taking out execution, imputes fraud to the judgment-debtor, the Court executing must examine the allegation.—*Ib.*

125. Difference between the two kinds of execution in England (viz. delivery under a writ of *elegit*, and a sale under a writ of *fieri-facias*) explained.—10 W. R. 154. *See also* (O. J.) 19 W. R. 16, 24 W. R. 366.

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126. S. 246 Act VIII applies to the case where one person holds property in trust for another living man, but not where he holds it in trust as the property of a man deceased.—10 W. R. 199. *See* 20 W. R. 280.

127. Act VIII gives no power in an ordinary suit for damages, to direct the amount to be assessed in execution. —10 W. R. 299, 11 W. R. 236, 13 W. R. 139.

128. Where no complaint was made of resistance or obstruction having been offered to the officer of the Court in executing a decree for immoveable property, no claim could be made under s. 229 Act VIII, and the error of the Court in taking summary cognizance of the case under that section was held to be one which, under s. 350, affected the jurisdiction of the Court.—10 W. R. 318.

129. It is not competent to the Court to withhold execution until the expenses are paid.—10 W. R. 354.

130. S. 208 Act VIII was held not to apply to a case where the purchaser of a decree and the defendant were one and the same person.—10 W. R. 354.

131. Plaintiff obtained a decree against J R in the Court of the Subordinate Judge of N within the jurisdiction of which J R resided. J R had obtained a decree in the Court of B against B G, which was attached by the Court of N under the decree of the plaintiff and sold to the plaintiff under the execution. *Held* that the Court of N had jurisdiction to sell J R's right, title, and interest in that decree, and having done so, that the plaintiff, who purchased under that execution, became the assignee of the decree, and, as such assignee, had a right to apply to the Court of B to have execution of it.—10 W. R. 357.

132. A Judge who has struck off an execution case improperly, is at liberty to restore it to the file, and need not proceed *de novo*. —10 W. R. 380. *See* 11 W. R. 517.

133. Execution of a decree passed against a man who was dead at the time the suit was instituted cannot issue against his representatives under s. 210 Act VIII.—10 W. R. 455.

134. A Court has no jurisdiction to execute a decree as if it had been passed against some other person.—10 W. R. 485.

135. Where a judgment-debtor is found entitled to a particular share of money deposited in a Collectorate, such share is not liable under s. 242 Act VIII to be sold in satisfaction of the decree, but may at once be made over to the decree-holder.—11 W. R. 30.

136. A Principal Sudder Ameen who, after ordering a rateable distribution among the creditors of the proceeds of certain properties belonging to the judgment-debtor, disallowed the distribution on account of objections by persons not parties to the original suit who claimed the surplus proceeds as those of a *debuttur* mehal, was held to have had no jurisdiction in making the last order, because, although a third party may, *before* sale, claim both moveable and immoveable property under s. 246 Act VIII, yet s. 230 prohibits such party from claiming immoveable property *after* sale in execution.—11 W. R. 54.

137. Where a judgment-debtor complains that the Ameen has given the decree-holder more land than he was entitled to under the decree, the objection should be enquired into. —11 W. R. 95.

138. With reference to s. 292 Act VIII, the Court to which application is made for the execution of a decree passed by another Court, neither acts without jurisdiction, nor refuses to exercise a jurisdiction it has, in complying with a requisition from the Court in which the decree was passed to transmit to it the record of the case.—11 W. R. 230.

139. A Judge is bound to refuse to proceed upon an application to give notice to judgment-debtors under s. 216 Act VIII, when there is before him an application for execution drawn up in conformity to s. 212. -11 W. R. 241.

140. Execution cannot proceed upon an application to execute an aliquot part of a decree; and where, notwithstanding objection made, applicants persist in seeking execution of decrees for their shares only, they cannot be allowed to amend an application which, after coming up to the High Court, they find it impossible to maintain, —*Ib.* *See* 11 W. R. 488, 15 W. R. 419, 17 W. R. 19, 23 W. R. 342.

141. Procedure where a number of applications are made under s. 230 Act VIII, and several applicants claim possession of the same property.—11 W. R. 255. *See* 15 W. R. 327.

142. Where on the death of R, who was a joint decree-holder with S, the latter receives the whole of the money due on the decree, and P, as R's representative, sues out execution to the extent of R's share in it,—*Held* that payment to S is not payment to P, who may proceed with the execution.—11 W. R. 262.

143. The enlargement of the time under s. 88 Act X for proceeding against the moveable property of a debtor, does not necessitate the issue of a fresh warrant.—11 W. R. 326.

144. When application is made for the execution of a decree of a Civil Court of the N. W. Provinces against property situated within a district under the Bengal Government, the procedure of the Bengal High Court in the matter of execution should govern the case.—11 W. R. 430.

145. With reference to s. 207 and also s. 208 Act VIII, a decree cannot be executed in portions.—11 W. R. 488.

146. A judgment-debtor seeking to stay execution until the decision of a suit against the decree-holder, should apply under s. 209 Act VIII. —11 W. R. 494.

147. S. 38 Act XXIII of 1861 is not intended to make the procedure applicable before decree applicable after decree, but to provide a procedure resembling Act VIII for cases not being suits.— *Ib.*

148. Breaches cut into an embankment which a decree only orders to be lowered, cannot be made in execution of the decree.—11 W. R. 516.

149. A decree sent for execution by the Court of one district to the Court of another cannot be recalled by the former on the application of a third party.—11 W. R. 557.

150. As to the discretion of a Judge under s. 221 Act VIII in issuing or refusing warrants for the execution of decrees. —12 W. R., O. J., 7. *See* 17 W. R. 165.

151. When a decree-holder allows his decree to be struck off and does nothing to revive it, it cannot be revived on the motion of the judgment-debtor.—12 W. R. 28.

152. Questions relating to the possession by a decree-holder of land not included in the decree are separate from those "relating to the execution of the decree" within the meaning of s. 11 Act XXIII of 1861, and may be made the subject of a separate suit.—12 W. R. 85. *See* 14 W. R. 39.

See as to land in excess of the quantity decreed.—25 W. R. 183.

153. In executing a decree for possession, all that a Court has to do is to put the decree-holder in possession of that which is described in the decree; and if the description is so uncertain that it is impossible to ascertain what is decreed, execution cannot be given. Evidence cannot be taken in the Execution Department to ascertain what is decreed.—12 W. R. 99. *But see* 16 W. R. 171.

But the Court executing the decree can take evidence to ascertain what is the subject upon which the decree operates.—22 W. R. 330.

154. A Lower Appellate Court was held justified in concluding from the examination of a judgment-debtor and from the circumstances of the case that he was not entitled to the benefit of discharge under s. 273 Act VIII and s. 8 Act XXIII of 1861.—12 W. R. 125. *See also* 14 W. R. 54.

Nor to the benefit of discharge from imprisonment under ss. 380 and 381 Act VIII.—12 W. R. 422.

155. When a person against whom a decree has passed in his representative capacity, has made payments in satisfaction of that decree to the full extent of the property which has come, or but for the representative's default might have come, to his hands, the decree can no longer be executed, even although the decree-holder may be able to prove that the representative still has in his possession property which originally belonged to the deceased.—12 W. R. 177.

156. If a decree is passed against a person in his representative capacity, and he makes payments in satisfaction of that decree, it is a legal and reasonable presumption, until the contrary is proved, that those payments are made by him in his capacity of representative.—*Ib.*

157. The rule of law which forbids application for execution of part of a decree does not bar application for all that remains due upon a decree where the rest has been previously satisfied.—12 W. R. 370.

158. An equitable right should be urged before decree

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and not afterwards in execution when rights of third parties have accrued.—12 W. R. 391.

159. When the judgment-debtors appeared and raised objections to the execution of a decree, the Court after investigation proceeded to pass judgment in the absence of the decree-holder. *Held* that the Court's action was taken under s. 114 Act VIII, and that the decree-holder had no right of appeal, but, if aggrieved, might apply for a re-hearing.—12 W. R. 428.

160. A decree calling for accounts is a personal decree and cannot be executed against the defendant's widow and representative.—12 W. R. 495.

161. In a case under s. 230 Act VIII, the Court is not restricted to try the question of possession merely, but if satisfied that there was a probable ground for the application of the applicant (plaintiff), should also go into the question of title between the applicant and the decree-holder (defendant).—(F. B.) 13 W. R. F. B. 80. *See* 14 W. R. 358, 15 W. R. 327, 18 W. R. 395, 22 W. R. 123.

The principle of the above ruling is equally applicable to cases under s. 229.—14 W. R. 140.

162. Under s. 362 Act VIII, an application for the execution of the decree of an Appellate Court should be made to the Court which passed the first decree in the suit, irrespective of any previous order referring the case for execution.—13 W. R. 27. *See also* 14 W. R. 295.

163. Where successive applications for execution had been made for years against a party merely as the representative of a deceased defendant,—*Held* that execution could not be taken out against him personally as one of the original defendants, even if he were liable in both capacities.—13 W. R. 36.

164. Where in a suit for possession, in which plaintiff succeeded only partially, all the defendants except R and G obtained a modification of the High Court's judgment leaving the decree standing against R and G alone,—*Held* that plaintiff, in applying for execution, could only ask for delivery of R and G's shares and interests under s. 224 Act VIII, but that the Court in execution could not authorize any enquiry into the estate of those shares in relation to the other defendants.—13 W. R. 123.

165. Procedure laid down for working out an incomplete decree for damages.—13 W. R. 139.

166. The Court of the Dewan Ahilkar of Cooch Behar is not a Court within British territory, and a Moonsiff has no jurisdiction to execute its decrees under s. 284 Act VIII.—13 W. R. 154.

167. By s. 208 Act VIII a Civil Court may grant or refuse an application to substitute an assignee's name for the original decree-holder, and there is no appeal except under s. 11 Act XXIII of 1861.—13 W. R. 224. *See also* 15 W. R. 283.

168. Delivery of possession under s. 264 Act VIII is complete as soon as the steps prescribed by that section have been taken; and any subsequent act of resistance on the part of the claimant to the land is not the resistance or obstruction referred to in s. 269, and can in no way give the Court a right to interfere in the summary way provided by that section.—13 W. R. 418. *See* 18 W. R. 87.

169. Where a decree for a bond-debt provides for the sale of the pledged property if the money is not paid, the property is liable for the debt decreed.—13 W. R. 453. *See also* 17 W. R. 62.

170. In such a case as the above, the decree-holder can get at the property only in execution of the decree, like any other judgment-creditor; while the judgment-debtor is entitled to the benefit of s. 243 Act VIII.—*Ib.*

171. A person coming in under s. 269 Act VIII more than a month after dispossession, has no *locus standi* under that section.—13 W. R. 466.

172. Where a certificate of non-satisfaction and a copy of the decree are transmitted by the Court which transferred the decree to another Court for execution under s. 285 Act VIII, any application for the reversal of execution after the proceedings have been struck off the file, or for the substitution of the name of an assignee for that of the original decree-holder, should be made to the Court which passed the decree. The word "Court" in s. 208 does not extend to the Court to which the decree is transmitted, but is limited to the Court which passed the decree.—14 W. R. 65.

173. The High Court has jurisdiction to direct a Lower Court in what manner its own (the High Court's) decree or order shall be carried into effect by the Lower Court, even when such order constitutes a part of the order in execution of a decree which the Lower Court ought to have passed.—14 W. R. 145.

174. When an application is made to execute a decree, and notice being issued under s. 216 Act VIII, the opposite party urges objections, the Court is bound to consider and pass orders on these objections whether a day is fixed for the hearing or not, and even if the petitioner is not present.—14 W. R. 155.

175. The representative capacity of the party applying to execute a decree on behalf of a minor ceases with the minor's death; further steps in execution must be taken by the deceased's legal representatives.—14 W. R. 162.

176. The party applying for execution of a decree of a Zillah Court affirmed in appeal by the High Court, should state whether or not a further appeal has been preferred to the Privy Council.—14 W. R. 205.

177. Execution of a decree against the civil pay of a non-commissioned officer in civil employ by a Civil Court (Small Cause Court) is entirely in conformity with law and not in contravention of s. 40 of the Mutiny Act.—14 W. R. 231.

178. Where the question raised goes behind the decree (*e.g.* that it was obtained on a fraudulent *solehnamah*), it cannot be gone into under s. 11 Act XXIII of 1861.—14 W. R. 299.

179. Procedure where there is an order of Court to stay the execution of a decree obtained by a party who has appealed to the Privy Council from another decree against himself, if the holder of the decree which is appealed against attempts to execute it.—14 W. R. 329.

180. Where a reversioner was insane and disqualified to inherit C's estate when the succession opened out to him upon the death of the life-tenants, the reversioner's heir was not allowed, as the representative of the reversioner who was not now C's heir, to execute a decree obtained by the reversioner during the lifetime of the life-tenants declaring him (the reversioner) to be the then nearest heir of C and entitled to succeed on the death of the life-tenants. —14 W. R. 329.

181. Where, after the death of a member of a joint Hindoo family, his widows were sued in their representative capacity and decrees were obtained in respect of debts incurred by him in his lifetime on his own account,—*Held* that the decrees could only be executed against that property which passed from the deceased to his widows in their own right, and not against other portions of the joint family property.—14 W. R. 339.

182. A regular suit to set aside a summary order only lies where the power to bring it is expressly conferred, as under s. 246 Act VIII. A party failing to obtain execution under this section may take out fresh application for execution.—*Ib.*

183. Where, in execution of a decree of a Small Cause Court, a portion of the military pay of a non-commissioned officer in civil employ was paid by his superior officer into the Court under mistake, the amount was ordered to be refunded to the superior officer.—14 W. R. 441.

184. Where a decree was passed in accordance with a compromise, defining the rights of two brothers (R and S) to certain properties and declaring that on the death of S a certain property should vest in R, and S died,—*Held* that R had a valid cause of action to sue for possession and mesne profits, but that the decree itself was not an award of possession.—14 W. R. 485.

185. If a person is to be concluded by the contention that his application to execute is not *bonâ fide*, he should be allowed to explain all his acts.—15 W. R. 5.

186. Sums paid in execution in excess of what was due under the decree can only be recovered by application to the Court which executed the decree, and not by a separate suit.—15 W. R. 160.

187. A judgment-debtor refusing to place at the Court's disposal a Government stipend or annuity, cannot ask for his discharge under s. 273 Act VIII.—15 W. R. 206.

188. Where a rival decree-holder shows that an attachment should not have issued as the decree under which it issued is barred by lapse of time, the Court, if satisfied that the decree is so barred, may prevent the decree-holder

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who took out execution from sharing in the distribution of the sale proceeds.—15 W. R. 219.

189. Where a decree declares a decree-holder's lien on certain property without distinctly declaring his right to sell the same, it may be executed as against that property specially; but attachment and sale. or attachment and management, as provided for by s. 243 Act VIII, must still take place.—15 W. R. 337.

190. A decree-holder may, under s. 210 Act VIII, follow his deceased judgment-debtor's property in the hands of the parties in possession, notwithstanding a certificate under Act XXVII of 1860 has been obtained by a third party.—15 W. R. 476.

191. A foreign judgment was not allowed to be executed when it was clear that the Foreign Court had no jurisdiction over the cause, subject-matter, and the parties, or that the defendants were actually summoned and had a fair opportunity of making their defence.—15 W. R. 500.

192. When a decree was in vague and general terms,—*Held* that resort should have been had to the judgment which accompanied it.—15 W. R. 530.

But where the judgment indicates any intention not authorized by the law and not embodied in the decree, the Court executing has more reason to be bound by the decree than by the judgment.—20 W. R. 308.

193. Where an appeal was inadvertently decreed against four shareholders instead of against five, the Court which executed the decree was held to have erred in recovering the entire amount decreed out of the shares of the four.—15 W. R. 545.

194. The appointment of a manager cannot prevent the Judge, on the application of a decree-holder, from enquiring into the state of the property attached and causing the decree to be executed in the usual way if there is no probability of the amount due being realized from the proceeds of the property within a reasonable time.—16 W. R. 46.

195. A decree-holder, after having given a release to some of the debtors, may proceed against the others.—16 W. R. 49.

196. A Small Cause Court in which a decree was passed is competent to entertain an application for its execution, even if the debtor's residence and moveable property are situate in a place which has since the decree been transferred to a different jurisdiction; the course pursued being that prescribed by ss. 285 and 286 Act VIII.—16 W. R. 227.

197. Where there are cross-decrees for possession and mesne profits in respect to the same land, the earlier decree comprehending only a part of the lands embraced in the later, each party may take out execution and be entitled to receive mesne profits separately.—16 W. R. 256.

Mode of calculating and dividing the mesne profits.—16 W. R. 294.

198. Where a suit is pending in appeal, the original decree for costs need not be executed until the proceedings are set at rest by the Appellate Court.—16 W. R. 266.

199. Proceedings subsequent to execution, and continued after the decree has been satisfied, are illegal.—16 W. R. 269.

200. In execution of decree, a judgment-debtor cannot be ordered to pay a sum beyond what is stated in the decree, although he may have, after the decree, agreed with the decree-holder to do so.—16 W. R. 275.

201. A decree which is not for possession cannot, under s. 223 Act VIII, be executed by an order for delivery of possession of property in the possession of a third party who has acquired a title subsequently to the institution of the suit.—16 W. R. 307.

202. Before staying execution of a decree and preventing the decree-holder from receiving the fruits of his decree, or before requiring him under s. 36 Act XXIII of 1861 to give security for its restitution, probable cause must be shown of the judgment-debtor's inability to recover the money if the decree be reversed.—17 W. R. 69.

203. Where a share of a decree was sold, and the vendee mortgaged the same, and the judgment-debtor by order of Court paid in the money, the mortgagee entering up satisfaction,—*Held* that there was an end to the decree as against persons liable for the mortgagor's share.—17 W. R. 159.

204. An application for staying execution of a decree was refused because nothing was shown in support of it beyond the fact of an appeal, and there had been great delay on applicant's part.—17 W. R. 160.

205. After an infructuous execution against the judgment-debtor's property, the Court is bound, upon application made, to issue execution against his person; and the burden of proof should not be put on the debtor, when arrested, to show that he has no means of satisfying the debt, and that he has not been guilty of misconduct.—(O. J.) 17 W. R. 165.

206. A Judge is not bound, under s. 243 Act VIII, to allow a judgment-debtor a year's time to pay his decree without the debtor assigning some good or sufficient reason for the delay.—17 W. R. 193.

207. In confirming a decree of the High Court, the Privy Council, being in doubt as to the amount to be decreed, left it to that Court to determine in execution whether a decree should be given for the full amount claimed; and as the doubt was found to be owing to a mistranslation of the word *shohodur* (uterine brothers), the Court allowed execution for the whole amount.—17W.R.340.

208. A decree awarding land may be executed, though there may have been a change in the aspect of the land (the boundaries) by the shifting of a river, if the position of the land can be ascertained.—17 W. R. 384.

209. The Court ought to see that the service of notice of execution is served on the right person, and should not be satisfied with the return of service upon a mere mookhtar and not the recognized agent of the judgment-debtor.—17 W. R. 389.

210. A subsequent declaration of illegitimacy cannot affect the right of persons, who were parties to a decree when it was made, to execute the decree which is in their names.—17 W. R. 428.

211. Parties who are decree-holders on the record are *primâ facie* entitled to take proceedings in execution and draw the money standing to their credit, without a certificate under Act XXVII of 1860 when there are no debts to be collected as due to the estate of a deceased decree-holder.—17 W. R. 510.

212. A decree for exclusive possession of a plot of land of which the judgment-debtors are not the sole owners, is incapable of execution, when the shares of the several shareholders have not been exactly defined and no partition has taken place.—18 W. R. 43.

213. When an application for execution omits to give the names of all the parties as required by s. 212 Act VIII, even if it shall appear from the proceedings who those parties are, the parties' names must be understood to be those against whom execution is sought.—18 W. R. 55.

214. A later decree confirmed on appeal was held to supersede an earlier decree between the parties, for all purposes of execution.—18 W. R. 192.

215. A decree for the performance of a particular act (*e.g.* the removal of certain obstructions in a pathway) can only be enforced under s. 200 Act VIII by the imprisonment of the judgment-debtor, or the attachment of his property, or both.—18 W. R. 282.

216. Where a judgment-debtor made over property to a decree-holder on the understanding that, in case of the latter's dispossession owing to the former's defect of title, the unrealized portion of the decree should be realized by execution of the decree,—*Held* that the reasonable construction to be put upon this agreement was that the transaction was to be put an end to, and the decree-holder to revert to his original right, and the judgment-debtor to have waived the benefit of the law of limitation.—18 W. R. 497.

217. Where, in execution of a decree for *khas* possession, it is necessary to remove any of the defendants from the land covered by the decree, the Court may, under s. 223 Act VIII, remove such person; but if the decree is silent as to a building on the land, the Court executing cannot have the building pulled down.—18 W. R. 526.

218. It is only on an application from the decree-holder, in case of obstruction to the execution of a decree for immoveable property, that the Court can be put in motion under s. 226 Act VIII.—19 W. R. 62.

219. An order to an Ameen to give possession to decree-holder of such of the moveable properties mentioned in the Schedule as he can find, and to enquire into the nature,

PRACTICE (EXECUTION OF DECREE) (*continued*).

amount, and value of such as he cannot find, need not be construed as giving alternative damages. The enquiry is necessary to guide the Court in the exercise of its discretion under s. 200 Act VIII.—19 W. R. 82.

220. Where a question such as is provided for by s. 11 Act XXIII of 1861, instead of being determined by order of the Court executing the decree, was made the subject of a separate suit in that Court,—*Held* that, though the form of proceeding was wrong, there was not a want of jurisdiction which could be made a ground of objection in appeal. —19 W. R. 90.

221. Where it is ordered in execution that a decree-holder shall get possession of a specified plot, so long as any portion of that plot remains, he cannot touch the remaining plots.—19 W. R. 161.

222. Property placed in trust with parties as managers but not beneficial owners, is not liable to be taken in execution of a decree against them.—19 W. R. 226.

223. Where plaintiff obtained a decree for declaration of right and recovery of possession of a jote sold in execution for arrears of rent due from the former owner, and the Appellate Court reversed the decree on the ground that plaintiff, not having deposited the rent claimed and given security, had no *locus standi*,—*Held* that there was no authority or countenance for this in the law.—19 W. R. 230.

224. Where one of several persons entitled to the benefit of a decree seeks to have it executed without joining the others interested, his proper course is to apply to the Court under s. 207 Act VIII.—19 W. R. 302.

Procedure in such a case.—21 W. R. 31.

225. Where a judgment-debt was reduced in appeal to a sum below the amount realized in execution,—*Held*, with reference to s. 11 Act XXIII of 1861, that a suit would not lie by the judgment-debtor to recover the excess, but that the Court charged with the execution of the decree had jurisdiction to determine the question and order a refund.—19 W. R. 413.

226. Where a decree has been executed by a Court other than that by which it was passed, the title of the purchaser may not be avoided by showing that there was property of the judgment-debtor within the jurisdiction of the Court that passed the decree which might have been attached and sold. Strictly speaking, until the latter property was sold, the certificate under s. 285 Act VIII should not have been granted; but the error, though ground for an appeal, does not make void the certificate.—19 W. R. 434.

227. Where in a suit for possession and declaration of title in respect of property sold in execution of a decree, execution having, as alleged by plaintiff, been fraudulently taken out, during his minority, of a decree barred by limitation,—*Held* that, according to s. 11 Act XXIII of 1861, the question ought to be raised in a Court executing the decree, and not in a separate suit.—20 W. R. 5. *See also* 23 W. R. 257, 24 W. R. 45.

228. Procedure under ss. 207 and 208 Act VIII where application is made for execution of a decree standing in the name of a deceased person.—20 W. R. 51.

229. Where a claim is investigated under s. 229 Act VIII, plaintiff may be entitled to possession; but the question whether the land is lakheraj or mâl can only be decided in a suit for assessment or resumption.—20 W. R. 57.

230. Payments by a judgment-debtor in satisfaction of a decree which is afterwards split up into shares, if made through the Court and while the decree is entire, ought to be taken into account and set off as in satisfaction of the whole decree.—20 W. R. 131.

231. The striking an execution-proceeding off the file in India is an act which may admit of different interpretations according to the circumstances, and no general rule can be laid down to govern all cases of that kind; but when a very long time has elapsed between the original execution and the date at which it was struck off, it should be presumed that the execution was abandoned and ceased to be operative, unless the circumstances are otherwise explained.—(P. C.) 20 W. R. 133. *See also* 20 W. R. 418; 24 W. R. 36, 56.

The mere validity of a prior attachment does not render null and void alienations made while it was pending.—25 W. R. 513.

232. Where a decree is obtained against a party to a suit in his representative capacity, any question arising as to the right to execute it under s. 203 Act VIII against the private property of the judgment-debtor, on the ground that he had received the property of the deceased, or that the property in question was really that of the deceased, would be cognizable and might properly be determined during the progress of the execution-proceedings.—20 W. R. 162.

233. Where application is made to execute a decree originally obtained against A, against B as one of the legal representatives of A deceased, and such application is based, as it must be, upon the ground that B is in possession of property belonging to the estate of A, which property the Court is asked to attach with a view to sale, B's answer to that application being that she holds the property not as A's representative but in her own right, such answer cannot be termed a setting-up of a claim under s. 346 Act VIII, but it is an answer made to an application under ss. 210 and 211, and the case comes under s. 11 Act XXIII of 1861.—20 W. R. 280.

234. In a proceeding under s. 208 Act VIII, the Court has not the power (as though it were a proceeding under s. 11 Act XXIII of 1861) to determine who is the representative or person to whom a decree has been transferred by operation of law where there is a contest about it; but the question ought to be determined by a regular suit.—20 W. R. 305.

235. The statement of a defendant that he has brought another suit for a declaration of his right to possession, is no reason for staying execution of a decree for ejectment.—20 W. R. 393.

236. Where the assignee of a decree obtained execution in the Deputy Collector's Court under cover of a declaratory and mandatory decree of the Civil Court, which latter decree was set aside in appeal, and a suit was brought against him to recover the money obtained by means of the execution-proceedings,—*Held* that the judgment-debtor had no title to recover the money unless he could show that he was defrauded by the transaction.—20 W. R. 406.

237. Where a decree is transferred and the name of the transferree put upon the record by the Court which passed the decree, and the transferree, in the character of decree-holder, takes out a copy of the decree and certificate and presents them to the Court of another district for execution, the latter Court has no jurisdiction to entertain any opinion as to the transferree's right to the execution sought; the transferree merely occupying the position of the transferror relative to the judgment-debtors, and taking the decree subject to the same rights of set-off as those under which it was held by the transferror.—21 W. R. 141.

238. Proceedings may be taken against a judgment-debtor in the execution of a decree any time within 3 years from the last application of the kind, even though they are not instituted within 30 days after an alleged wrongful obstruction by him; the 30 days prescribed by s. 226 Act VIII being only the limit of time within which the judgment-creditor may by s. 228 bring an action of ejectment against a stranger without the expense of a regular suit.—21 W. R. 147.

239. It is the duty of the Court in proceedings for the purpose of assessing mesne profits during the pendency of the application for execution to take care that those proceedings are carried on diligently and are not without good cause protracted.—21 W. R. 212, 241.

240. When money is duly paid into Court by a judgment-debtor in satisfaction of a decree against him, the Court is bound to pay it out immediately on the application of the judgment-creditor, and to inform the judgment-debtor, when asked to do so, what is the amount remaining due from him under the decree.—21 W. R. 271.

241. All the objections which a judgment-debtor has to make to a judgment-creditor's application for execution, should be made simultaneously.—21 W. R. 288.

242. Where a decree is transferred to another Court for execution without the knowledge of the judgment-debtor, his remedy is to apply to the Court to which the decree has been transferred to stay proceedings until he can get to the original Court for his full remedy.—21 W. R. 330.

243. If complete execution cannot be had in the district of the Court to which it has been transferred for execution, the decree-holder should have his decree returned to the

PRACTICE (EXECUTION OF DECREE) (*continued*).

Court which made it, and there to obtain a fresh certificate for transmission to any other district where execution may be practicable.—21 W. R. 337.

244. An Appellate Court cannot amend a decree of the first Court with reference to a share of mesne profits not objected to in the first Court.—21 W. R. 338.

245. The judgment-creditor of the decree-holder cannot call upon the Court to execute his judgment-debtor's decree as if he himself were the decree-holder.—21 W. R. 419.

246. In applying for execution under s. 210 Act VIII, it is incumbent upon the judgment-creditor to make it quite clear how he claims the benefit of that section quite independently of the particulars required by s. 212.—21 W. R. 420.

247. The maxim "*omnia presumuntur rite esse acta*" applies to the issue of a notice under s. 216 Act VIII.—22 W. R. 5.

248. Where all the judgment-creditors but one (H) applied for execution of a decree for costs against one of the judgment-debtors, whose answer was that she had paid all that was due from her under the decree to H, who had, under s. 206 Act VIII, certified the fact to the Court, —*Held* that the applicants, not being the whole of the decree-holders, had no right to make the application without showing (as required by s. 207) sufficient cause for such a course, viz. either that they did not know of the alleged payment to H, and that, if made, it had been made to defraud them, and that the defendant was privy to the fraud.—22 W. R. 77.

249. Where a decree is simply affirmed by the Appellate Court, it is the decree of the Appellate Court which is to be executed.—22 W. R. 102.

250. Where execution-proceedings are carried on in respect of a fractional share of a decree, for all that remains of the assets after satisfaction of one party, the Court should take necessary steps to protect the interests of other parties entitled under the decree.—22 W. R. 204.

251. *Quære.* Whether the creditor of a member of a joint Hindoo family has not some remedy, under s. 205 Act VIII, against the property to which his debtor is entitled.—22 W. R. 214.

252. Where a manager had not filed accounts and the Judge found that the management could not be continued with any prospect of the debt being paid within three years, he was held to have done right in removing the manager and ordering the property to be sold.—22 W. R. 220.

So also when the Judge, on the death of the manager, refused to appoint a new manager and directed execution to proceed against the estate.—24 W. R. 33.

253. X, Y, and Z obtained a decree in the Subordinate Judge's Court against B, who subsequently obtained a decree in the Moonsiff's Court against X, Y, and Z. Shortly after this, X, Y, and Z applied to the Subordinate Judge for an attachment of the decree of B, who, pending the application, assigned it to R, after which the attachment was effected. X, Y, and Z then sued R for a declaration of their title to a set-off, and this suit was dismissed by the first Court but decreed by the Lower Appellate Court. *Held* that R, as assignee of B's decree, must, under s. 208 Act VIII, be considered and treated in all respects as if he were the original decree-holder and in that character party to the suit; that the question raised by X, Y, and Z was one raised between the parties relating to the execution of the decree within the meaning of s. 11 Act XXIII of 1861, and therefore the present suit could not lie; and that, on R's application for execution, the Moonsiff ought to have refrained, in the absence of authority from the attaching Court, from substituting R's name for B's in the decree, or from altering the decree without giving reasonable effect to the application of X, Y, and Z for a set-off, by staying proceedings to enable them to get their decree transferred to his Court.—22 W. R. 235.

254. Where a judgment-debtor has bolted and locked the doors of a house for the possession of which a decree has been passed, the Court executing the decree is bound, under s. 223 Act VIII, to remove the locks and to place the decree-holder in possession.—22 W. R. 288.

255. Although an application to execute a decree in part is informal, yet if the proceedings taken thereupon are in effect in execution of the decree as a whole, they are good and valid.—22 W. R. 354.

256. Where A was the sole decree-holder and in execution of his decree the judgment-debtor paid into Court the amount decreed, and subsequently A and M put in a petition that they were to take out this money in equal shares, but, so far as the judgment-debtor was concerned, the decree-holder was A alone, and A, though informed that the money was available and that he would be responsible if he did not join M in taking out the money, yet took no steps in that behalf; A was held liable, on the suit of M, to pay M not only his moiety of this money, but also the costs of his suit.—23 W. R. 14.

257. Under s. 230 Act VIII, where one or two decree-holders apply for execution of a decree, the Court can in its discretion put the parties to terms, *i.e.* direct them to give security or call upon the other party to show cause why the decree should not be executed, and the Court can then execute the decree on the application of one of the parties only.—*Ib.*

258. A decree-holder, who has released his deceased judgment-debtor's representative, and exempted the property which has come into his hands from execution, cannot go against other property which only became liable by way of security for the due payment of the debt by the principal debtor.—23 W. R. 19.

259. Judgment-debtors against whom execution is sought are competent to object that it cannot proceed *benamee*, the party interested being himself one of the judgment-debtors, whenever the fact comes to notice, and are not debarred, by having suffered execution at one instance, from setting up the objection when a further application is made.—23 W. R. 95.

260. Where the sons of a deceased judgment-debtor, whose estate is declared by the decree to be liable to sale, are admitted on the record as his representatives, they are not entitled, in the execution stage, to re-open the whole case, and to ask for a decision as to whether the debt incurred by the father was not for the benefit of the estate, or was in some other way invalid under the Hindoo law, and not binding on the joint family.—23 W. R. 127. *See also* 24 W. R. 361.

261. Where a decree-holder, having a certificate for possession and mesne profits, obtained possession, but delayed in respect of the mesne profits, and the case was struck off, and subsequently, on the result of an appeal to the Privy Council being in his favor, applied within three years of the Privy Council's decree to complete the execution,—*Held* that he was entitled to have the mesne profits ascertained without a fresh certificate.—23 W. R. 225.

262. The objection that a decree is not operative against defendants who had not been served with notice, cannot be urged by way of a miscellaneous appeal, but by way of review of judgment.—23 W. R. 226.

263. The purchaser of a share in a decree cannot be allowed to take out piecemeal execution; but the Court may allow the decree to be executed as a whole on his application, taking steps to protect the interests of the other decree-holders.—23 W. R. 282.

264. Where two out of several decree-holders petitioned the Court to execute their share of the decree (which was for possession and mesne profits), and the other decree-holders, though they virtually joined in the application by signifying their consent, subsequently retracted their consent, and the original applicants declined to proceed with the execution of the decree for mesne profits,—*Held* that there was no application on the part of all the decree-holders to execute the decree for mesne profits, nor any application by some of them for execution of the whole decree, and that the Court's order directing realization of the unpaid portion of mesne profits was passed without any proper application.—24 W. R. 11.

265. S. 208 Act VIII refers to the assignment of a whole decree, and not of a portion of a decree.—*Ib.*

Quære. Can the purchasers of a share in a decree be added upon the record, under the above section, as co-decree-holders.—*Ib.*

266. When an application is made by a judgment-debtor to stay execution of an Appellate Court's decree, the Court executing the decree cannot enquire into the question whether any notice was served upon the applicant before the appeal-judgment was passed.—24 W. R. 33.

PRACTICE (EXECUTION OF DECREE) (*continued*).

268. The consent of parties cannot alter the nature of a decree; an agreement introducing fresh parties cannot be substituted for the decree or become capable of execution as if it was the original decree.—24 W. R. 205.

269. If a judgment-debtor, after receiving notice that the right, title, and interest of the decree-holders in the decree have been attached, pays the decree-holders the money due under the decree, the payment is not a valid payment, and the Court executing the decree should determine whether the alleged satisfaction is binding on the auction-purchaser of the attached right, title, and interest of the decree-holders.—24 W. R. 245.

270. Where a decree is in favor of several persons and some of them transfer their interest to a third party, the Court may allow the purchaser to appear as co-decree-holder under s. 208 Act VIII, or allow him alone, under ss. 207 and 208 together, to execute the whole decree, if the interests of justice required it.—*Ib.*

271. Where a judgment-creditor proceeding to execute a decree for land and certain papers, failed to find the papers and then instituted further proceedings either to get them or the money payable in default,—*Held* that he had adopted the only course open to him, and that there was no splitting up of the decree into different executions.—25 W. R. 58.

272. A decree declaring that an attachment should be removed cannot be executed for money.—25 W. R. 59.

273. A petition praying that the matter of an execution previously applied for should be disposed of along with a similar application in another suit, is not an application to enforce execution.—25 W. R. 94.

274. Where a decree only declared plaintiff's right of passage through a doorway, and to remove the brickwork with which it was filled,—*Held* that, in executing it, the decree-holder was not authorized to remove a wooden door in existence there.—25 W. R. 120.

275. The mere fact of a decree-holder having omitted to certify the names of some judgment-debtors on any former occasion on which he took out execution, does not do away with the effect of the original decree.—25 W. R. 156.

276. Where a judgment-debtor applies under s. 280 Act VIII for his release, supported by an affidavit and also by his deposition on oath to the effect that he has no property whatever to satisfy the decree, it is incumbent upon the decree-holder, under s. 281, to show that the judgment-debtor was making a false statement as to his means and ability to pay the debt.—25 W. R. 182.

277. A judgment-creditor has, by virtue of the judgment, without execution, no right to the property of the judgment-debtor, and is not entitled to recover it from the persons in whose hands it is. The procedure prescribed is to execute the judgment by attachment and sale if necessary, and not to proceed by action.—(P. C.) 26 W. R. 82.

See Adjustment 1, 2, 3, 4, 5, 6, 7, 8, 9.
Ancestral Property 2, 7, 21.
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Land Dispute 37.
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,, (Act X of 1859) 20.
,, (Act XIV of 1859) 33, 45, 59, 61, 98, 99, 109, 256, 260.
,, (Act IX of 1871) 4, 19, 20, 21, 23.
,, (Execution of Decree).
Lis Pendens 8.
Maintenance 2, 18, 35.
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,, (Appeal) 10, 66, 78.
,, (Attachment).
,, (Parties) 4, 32, 33.
,, (Possession) 28, 29, 44, 49, 64, 71.
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,, ,, Surety 8, 10, 12, 20.
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See **Reversioner 17.**
Revival of Decree.
Sale 2, 3, 5, 6, 8, 10, 12, 13, 14, 20, 21, 23, 24, 25, 26, 28, 29, 33, 37, 39, 42, 43, 44, 48, 50, 51, 52, 55, 57, 58, 59, 60, 63, 64, 65, 66, 67, 68, 69, 72, 73, 74, 77, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 95, 96, 100, 110, 111, 113, 120, 122, 123, 127, 128, 129, 133, 134, 135, 136, 137, 139, 140, 141, 143, 149, 153, 156, 158, 159, 164, 166, 169, 171, 173, 174, 175, 178, 179, 181, 183, 184, 185, 186, 187, 190, 191, 200, 201, 203, 204, 205, 205*a*, 206, 211, 212, 213, 215, 216, 217, 218, 219, 221, 225, 231, 232, 233, 236, 238.
,, Law (Act XI of 1859) 19.
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Specific Performance 4.
Stamp Duty 23.
Succession 3.
Suit for Money 2, 3, 4.
Summary Award for Rent 1*a*.

Practice (Motions).

It is not the practice to hear more than one Counsel or pleader in support of an *ex-parte* motion.—(F. B.) 6 W. R., Mis., 114.

See **Default 16.**
High Court 65, 98, 99, 120.
Practice (Attachment) 42.
Rules of Practice 5.

Practice (Parties).

1. Plaintiffs sued for the reversal of a summary award for rent and restitution of the money which they had paid under it, alleging that the proceedings before the Collector had been promoted entirely by A under the false name of B, a person never in existence: and it having been urged in special appeal that A not being a party on the record, the plaintiffs could not recover in this form of action, the Court, although it held that plaintiffs' more prudent and regular course would have been to sue A for damages, declined to interfere with the decisions of the Lower Courts on a mere matter of form.—1 Hay 4.

2. The parties being before the Court, it has full power to decide who has and who has not right, and in dismissing plaintiff's suit, to declare that neither of the other parties had any right to the property claimed.—Sev. 10.

3. Where a plaintiff was summoned as a witness and did not attend, and the first Court, instead of enforcing his attendance or proceeding to pass a decree against him under s. 170 Act VIII of 1859, tried the case on the merits and gave the plaintiff a modified decree, the Lower Appellate Court, instead of reversing the decision and dismissing the plaintiff's claim on the ground of non-attendance, should have again summoned the plaintiff and then acted under s. 170.—W. R. Sp. 133.

4. Where a decree for wasilat was given against the manager of an unregistered trading Company, the plea that the Company was not a corporate body, and therefore not liable to be sued without a disclosure of the names of the parties constituting the Company, not having been taken until the execution stage, was held to be a technical one and taken too late to be of any weight in a Court of Equity.—W. R. Sp., Mis., 7.

5. A plaintiff required to appear, but not to give evidence, does not fall within s. 170 Act VIII of 1859.—1 W. R. 80.

6. An order dismissing an application under ss. 162 and 163 Act VIII is final; but when a Court of inferior jurisdiction exercises its summary powers in dismissing such an application, it should show on the face of its judgment that judicial discretion was used.—1 W. R. 83, 297.

7. An Appellate Court has no authority to interfere with the order of a Lower Court under s. 170 Act VIII (deciding against a party who refused to come forward and give evidence after he had been duly summoned to do so), much less to pass a contrary decision without insisting on the absentee's evidence being recorded, or giving any reason for dispensing with it.—1 W. R. 114. *See also* 16 W. R. 295. *But see* 12 W. R. 244, 369; 15 W. R. 253.

8. If a case is remanded for the attendance and examination of the plaintiff, the Lower Court may dispense with his attendance, and accept the evidence of his agent instead, if the plaintiff be ill and unable to attend.—1 W. R. 330.

9. In a remand for the examination of one plaintiff, the examination of the other cannot be insisted on.—1 W. R. 357 (3 R. J. P. J. 354).

10. If a party is certified to be a material witness and there is no special reason why he should not be summoned, a Court does not properly or legally exercise the undoubted discretion vested in it by s. 162 in refusing to summon him merely because other material witnesses are relied on or may be called.—2 W. R. 4.

11. Where A, a party to a suit, applies under s. 162 for the examination of another party B, it is A's duty under s. 165, after the expiration of the time given to B under s. 163 to show cause why he should not attend and give evidence, to apply for an order requiring B to attend and give evidence.—2 W. R. 218.

12. A party who submits to a remand or other material step in legal proceeding, cannot afterwards object to the legality of such step.—3 W. R. 191.

13. S. 42 Act VIII is applicable to suits under Act X of 1859.—3 W. R. (Act X) 162.

14. So also ss. 166 and 170 Act VIII.—4 W. R. (Act X) 18, 50.

15. A Judge is not justified in setting his face generally against the summons of parties as witnesses.—4 W. R. (Act X) 18.

16. A defendant cannot be deprived of his right to summon plaintiff as witness, by the Court examining plaintiff's agent.—4 W. R. (Act X) 50.

17. S. 170 Act VIII is discretionary. Under it, the first Court may decide against a defendant on the ground of his failure to appear, even without going into the plaintiff's evidence; and the Lower Appellate Court is equally within the law in going into the whole case on its merits.—5 W. R. 89.

18. The purchaser of a decree is not a party to the suit within the meaning of s. 11 Act XXIII of 1861.—5 W. R. 215. *See also* W. R. Sp., Mis.. 35. *See contra* 8 W. R. 197, 10 W. R. 205.

19. It is not incumbent on a Court, with reference to s. 162 Act VIII, to give detailed legal reasons for its refusal to comply with an application to enforce the attendance of a party to a suit as a witness.—6 W. R. 65.

20. A person cannot at one time set himself up as a substantial party in a suit, contesting it in both the Lower Courts on the merits, and then turn round and say in special appeal that he has nothing to do with it and has been unnecessarily brought in.—6 W. R. 66.

21. Where one defendant, having ceased to have any interest in the suit, died, it was held, with reference to ss. 99 and 100 Act VIII, that the suit went on against the other defendants, without any survivor against his representatives.—6 W. R., C. R., 2.

22. Where a Judge refused to summon a plaintiff as a witness under s. 162 Act VIII, acting on a wrong assumption of facts, the High Court entertained a special appeal and remanded the case.—7 W. R. 147. *See* 10 W. R. 184.

23. In the case of an unincorporated or unregistered Company, the plaintiff (if he does not know of what persons the Company is composed) may, under s. 26 Act VIII, sue the Company under the name under which it is carrying on business, stating in his plaint his inability to describe it better.—8 W. R. 45.

24. The proceeding for compelling the attendance of a

PRACTICE (PARTIES) (*continued*).

party as a witness laid down in s. 170 Act VIII applies, under s. 38 Act XXIII of 1861, to miscellaneous proceedings.—8 W. R. 64.

25. There is no power to strike out a plaintiff's name and to substitute the name of a purchaser from him. An order doing this can be set right by the High Court under 24 and 25 Vic. c. 104 s. 15.—(F. B.) 9 W. R. 309, 487. *See* 12 W. R. 87, 15 W. R. 121.

Nor is the purchaser entitled to appeal against an order of dismissal without joining the original plaintiff as appellant.—15 W. R. 106.

26. In an action for mesne profits of land decreed in a suit for possession after notice of foreclosure, where defendants, not having been ignorant of the real party with whom they had been dealing, were in no wise prejudiced by the disclosure that the ostensible plaintiffs were not really interested, the parties in whose name the suit is brought may be regarded as trustees for the person beneficially interested.—10 W. R. 145.

27. When a defendant having been summoned neglects to attend, the Court ought to decide according to s. 170 Act VIII, and not to dismiss the suit for want of proof when the plaintiff is unable to prove his case without the evidence of the defendant.—10 W. R. 158. *See* 15 W. R. 269, 17 W. R. 550.

28. Under s. 170 Act VIII it is discretionary with a Court to pass such orders as it thinks proper in regard to a plaintiff who disobeys its summons to attend, and it is no ground of special appeal that further steps were not taken by the first or the Lower Appellate Court.—10 W. R. 171.

29. Where a person was made a party to a suit and again dismissed from the suit before the decree was given,—*Held* that he was not a party within the meaning of s. 11 Act XXIII of 1861.—10 W. R. 191.

30. Where plaintiff rests her claim solely on the deposition of defendant, she cannot be allowed to examine further witnesses and to re-open the case.—10 W. R. 284. *But see* 13 W. R. 108.

31. Where the widow of a judgment-creditor refused to make her daughters co-plaintiffs,—*Held* that she could not recover their share.—10 W. R. 397.

32. Where the property of J was sold in execution of a decree against B (J being B's representative, but not having been shown to have inherited any of B's property).—*Held* that J could not sue to cancel the sale of her personal property, she not being a party to the suit within the meaning of s. 11 Act XXIII of 1861.—(F. B.) 11 W. R. F. B. 1. *See* 33 *post*.

The above ruling was over-ruled by the Privy Council so far as regards the general proposition therein laid down that a party sued in a representative character is not a party to the suit within the meaning of s. 11.—(P. C.) 18 W. R. 185. *See* 20 W. R. 162, 280.

33. A person against whom proceedings in execution are taken as the representative of a deceased judgment-debtor under s. 210 Act VIII may not be a party to the suit within the meaning of s. 11 Act XXIII of 1861, but he is not debarred from the benefit of an appeal under the latter section.—11 W. R. 368. *See* 13 W. R. 224.

34. The Lower Court was held not to have exercised an arbitrary discretion under s. 170 Act VIII in deciding the case in the absence of some defendants who were summoned as witnesses where plaintiff did not take the necessary steps to enforce their attendance.—12 W. R. 36.

35. Where the purchaser of a plaintiff's rights was substituted for the plaintiff, the irregularity was held to be cured by the consent of the defendant, implied in his offering no opposition but appealing from the judgment on the merits and making the substituted plaintiff one of the respondents.—12 W. R. 87. *See also* 12 W. R. 455.

36. In a suit for a declaration that certain pottahs are forgeries, all the parties interested in and holding under the pottahs should be made parties to the suit.—12 W. R. 247.

37. S. 162 Act VIII does not require observance of any formalities in making an application to enforce the attendance of a party as a witness.—12 W. R. 317.

38. S. 170 was held applicable to a case where no legal summons was served on plaintiff, but it was inferred that he knew his attendance in Court was desired.—*Ib.*

39. In a suit by putneedars, where parties who had subsequently acquired an interest in the putnee, assented to the suit being carried on in the names of the plaintiffs,—*Held* that there was a sufficiently constituted suit and a sufficient array of parties to enable the Court to give a decree.—13 W. R. 126.

40. A Court is justified in declining to summon a plaintiff when defendant has failed to give any kind of proof.—14 W. R. 99.

41. A party (the Government in this case) who forces himself into a suit as defendant is as much a defendant in all respects as if he had been originally named a defendant by the plaintiff; and if issues raised by him as between himself and plaintiff are properly tried, the judgment thereon will bind the parties, whatever be the judgment on the original question between the plaintiff and those whom he sued.—16 W. R. 63.

42. Where defendant failed to produce a document which he had produced on a former occasion or to show that he could not do so,—*Held* that judgment might have been passed against him under s. 170 Act VIII, and that the certified copy of the document produced by plaintiff was good in support of his cause if it could not be rebutted.—16 W. R. 196.

43. A Court is bound, under s. 162 Act VIII, before summoning a plaintiff to give evidence, to record the reasons of its being satisfied that his evidence is essential to defendant's case.—17 W. R. 507. *See also* 21 W. R. 44.

44. S. 170 Act VIII ought not to be put in force against a defendant declining to appear and give evidence when plaintiff gives no evidence in support of his case.—17 W. R. 563.

45. Defendant having in his hands one-half of the immoveable property on the mortgage of which the loan was originally advanced, was held to have been properly sued in respect of half the original liability.—18 W. R. 61.

46. Where the best evidence is not given and the opposite party does not object to the secondary evidence put in, the decree must stand on such evidence as is before the Court, notwithstanding that it exhibits marks of inferiority and the absence of the best evidence is not accounted for.—19 W. R. 218.

47. A purchaser at a sale in execution of a decree (of property the sale of which was alleged to have been unauthorized by the decree) was held to be not a party to the suit within the meaning of s. 11 Act XXIII of 1861.—20 W. R. 233.

49. A defendant who *bonâ fide* and for a substantial reason requires the evidence of the plaintiff to be taken, ought not in ordinary circumstances to have a decree made against him until that evidence is taken.—21 W. R. 71.

See Appeal 29, 51, 81, 85, 87, 88, 150, 166.
Arbitration 17, 18.
Assignment 15.
Champerty 1.
Co-defendants 1.
Contribution 19.
Co-sharers 1, 11.
Costs 59, 60, 72.
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Default 5, 9, 10, 11.
Defect of Parties.
Dismissal of Suit or Appeal 3.
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,, (Documentary) 63.
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Ex-parte Judgment or Decree 15.
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PRACTICE (PARTIES) (*continued*).

See Limitation 42, 65, 134, 140.
Lis Pendens 1.
Minor 1, 7, 16, 28, 36, 43, 44.
Mortgage 20, 275.
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,, (Appeal) 5, 10.
,, (Attachment) 71.
,, (Commissions) 1.
,, (Suit) 3, 32, 35, 46, 56.
Recorders 5.
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Right of Appeal 10.
Right to sue 5, 14.
Settlement 22.
Small Cause Court 45.
Summons 5.
Vendor and Purchaser 63, 65.
Withdrawal of Suit or Appeal 7.
Witness 1, 2, 3, 5, 39, 54, 72.

Practice (Possession).

1. In a suit under Act X of 1859, a plaintiff's title to obtain possession cannot be decided irrespectively and independently of the fact of possession and of illegal ejectment.—1 R. J. P. J. 44 (Sev. 8*a*).

2. In a suit for possession of certain land from which plaintiff alleges defendant ousted him, it is not necessary to enquire whether plaintiff held it free of rent, or whether he paid rent for it, or ought to pay rent for it.- Sev. 153.

3. The assignee under an *ikrarnamah* of the rights and interests of three brothers in a certain property having established the rights of his assignors by a decree of Court in a suit in which he made all the parties interested parties to it,—*Held* that he was not obliged to defer suing for possession until every possible form of appeal from that decree had been gone through by the son of the fourth brother.—Sev. 179.

4. In a suit by an auction-purchaser to obtain possession of disputed land, the mere declaration that oral evidence and the report of an Ameen could not be sufficient, were held to be contrary to law and practice.- Sev. 760*b*.

5. In a suit to recover possession of land from parties who have admittedly been 30 years in possession, oral evidence cannot be relied upon, where the plaintiffs are not auction-purchasers or new holders of the property.—Sev. 770.

6. In a suit to recover possession and mesne profits on the averment that the defendant without any title has by mere force taken possession of the property, the defendant is entitled to raise the question of plaintiff's present title to the estate, but it is of no avail to him to plead that plaintiff was only nominal-purchaser for another party, when plaintiff can prove the execution of a deed of relinquishment by that other party in his favor.—Sev. 835.

7. Plaintiff having a right to sue for possession, is not bound to go to the Collector under s. 25 Act X of 1859, nor to appeal to the Commissioner from the decision of the Collector refusing to give assistance.—Sev. 967.

8. In a suit for possession, if defendant in possession pleads limitation, he is entitled to a clear finding upon it before the question of title is enquired into. –W. R. Sp. 142, *See* 9 W. R. 365, 24 W. R. 315.

9. A suit for confirmation of possession cannot be decreed without proof of actual possession.—W. R. Sp. 187; 6 W. R. 64, 317. *See* 15 W. R. 286.

10. In a suit by a shareholder to recover possession, defendant, though in wrongful possession, may object to the decree extending beyond plaintiff's share.—W. R. Sp. 246 (L. R. 20).

11. In a suit to recover possession, where plaintiff fails to prove his special plea of a *mourosee* title supported by a pottah, he cannot be permitted to fall back on his general rights as a *kudeemee* ryot.—W. R. Sp. 259.

12. The purchaser of a house sold under s. 110 Act X of 1859, is not bound to bring a regular suit to obtain possession.—W. R. Sp. (Act X) 51 (2 R. J. P. J. 214).

13. Where a tenant sues to recover possession after ejectment by a landlord who does not deny plaintiff's pottah and dakhilas, he is entitled to a decree notwithstanding that the new tenant in possession states that those documents are forgeries.—W. R. Sp. (Act X) 134.

14. According to Reg. XV of 1816 (Madras Code), in a suit for possession of joint family property in which the plaintiff's title depended on the fact of a division having taken place in the family, a distinct averment of division must be made in the cause, and a direction given by the Court for the production of evidence in proof of such an averment.—(P. C.) 6 W. R., P. C., 50 (P. C. R. 155).

15. In a suit for possession, the Civil Court's decree is defective unless it decides the question of title.—1 W. R. 205.

16. A plaintiff claiming possession of land is entitled to an adjudication of his claim. The determination of the zemindar's higher right does not determine plaintiff's claim. —1 W. R. 336.

17. In a suit by a ryot to recover possession, under cl. 6 s. 23 Act X of 1859, the zemindar admitting a tenancy at some former time, should show that it has determined.—1 W. R. 361.

18. In a suit for possession, the manner of dispossession is immaterial so long as the fact is proved.—2 W. R. 154.

19. In a suit for possession a decree was held to have been properly given for the correct quantity of land as specified in the supplemental plaint, though larger than the quantity mentioned in the original plaint.—*Ib.*

20. A person suing as lakherajdar for possession of land of which he has been dispossessed by the zemindar, is not entitled to a decree merely on the ground of his possession after the resumption proceedings, but on proof of possession several years before resumption.—2 W. R. 236.

21. A person, whose suit for possession is dismissed, is not entitled to a declaration of his right to receive possession of the proprietary title, *i.e.* to receive rent, from those who admit tenancy.—2 W. R. 237.

22. Where, in a suit for possession of resumed lands, the plaintiff contends that the laws (Regs. II of 1819 and III of 1828) under which the lands in dispute were resumed, contemplate assessment and not ejectment, the plaintiff must prove that he had formally applied for, and been refused, a settlement of the lands.—2 W. R. 239.

23. A person who has obtained symbolical possession under s. 224 Act VIII, may subsequently call for actual possession under s. 223, if the terms of his decree warrant such possession being given.—3 W. R., Mis., 2; 9 W. R. 454; 17 W. R. 80. *See* 10 W. R. 396, 12 W. R. 285.

24. In a suit to recover possession under cl. 6 s. 23, plaintiff must prove when his cause of action commenced, when and how he was dispossessed, and whether he has sued within time.—4 W. R. (Act X) 24.

25. A suit for possession and mesne profits in which defendants do not allege possession for 12 years, but stand on their title, cannot be dismissed on the ground that plaintiff's possession and dispossession have not been specifically shown.—5 W. R. 228.

26. In a suit to recover possession, the sole question for decision is the right to possession, apart from all questions of lakheraj or no lakheraj, etc.—1 W. R. 111, 5 W. R. 269.

27. The possession of a single share-holder with the consent of all the co-sharers cannot be disturbed.—5 W. R. 287.

28. Where the question for trial is the right to possession, proof of actual possession is not necessary.—6 W. R. 155.

29. A decree for possession, once satisfied by the plaintiff's being put in actual possession, cannot afterwards be revived or re-executed on the plaintiff being dispossessed. —6 W. R., Mis., 108.

30. S. 269 Act VIII contemplates a suit by a party out of possession and not by a party in possession.—7 W. R. 87.

It does not apply where there is no dispossession.—12 W. R. 509.

Nor where no attempt has been made to deliver possession; but the Court is not therefore barred from adjudicating a claim to a *putnee* right as to land of which decree-holder has applied for *khas* possession.—19 W. R. 219.

Practice (Possession) (*continued*).

31. In a suit for possession and declaration of title, s. 260 Act VIII does not prohibit a defendant from questioning plaintiff's title on the ground of fraudulent and fictitious purchase. It provides for dismissal of a suit brought to question the title of a certified purchaser, but does not prohibit defendant from questioning that title when an auction-purchaser seeks to oust him.—8 W. R. 130. *See also* 9 W. R. 360.

32. The *khas* possession of a dur-putneedar having been established by a decree under s. 230 Act VIII, cannot be disturbed except by a regular suit for direct possession.—8 W. R. 131.

33. A ryot who has held under an invalid lakheraj and is turned out, cannot sue to recover on the ground of anterior possession.—8 W. R. 238.

34. A plaintiff in possession under a deed of conveyance subject to an undertaking to re-convey on repayment within a period which has long elapsed, is entitled to establish his right to possession against an intruder claiming on a fraudulent sale.—8 W. R. 340.

35. Where defendant's holding is permissive, plaintiff can put an end to it and recover possession by serving him with notice to quit.—8 W. R. 385.

36. Where plaintiff having purchased shares in a joint property and held possession, sued to recover possession,—*Held* that, on establishing their right, they were entitled to recover possession whether originally joint or separate. —8 W. R. 450.

37. A ryot's tenure having been sold for arrears of rent under an Act X decree, the purchaser is entitled to be put in *khas* possession of the *entire* tenure as it originally stood, notwithstanding that the ryot's sons have been occupying huts on the land for more than twenty years. The circumstance that the purchaser happens to be the superior landlord does not diminish his right.—8 W. R. 478.

38. Defendants, failing to prove joint possession, cannot plead limitation in a suit for confirmation of title and possession.—9 W. R. 169.

39. It is not necessary for a plaintiff to prove that he was dispossessed on the date mentioned in the plaint (or on any particular date).—9 W. R. 348, 15 W. R. 178, 17 W. R. 501, 23 W. R. 433, 24 W. R. 357.

Provided he proves he is entitled to possession at the time of bringing the suit.—13 W. R. 111.

40. Plaintiff's failure to prove possession within 12 years of suit does not entitle defendant to a verdict. Possession must be weighed with other evidence for the party proving it and the evidence of the opposite party.—9 W. R. 365.

41. Where the heir of an ostensible auction-purchaser seeks to oust defendant, who has been 12 years in possession and who pleads that the sale was *benamee*, long possession proves defendant's allegation to be true, and plaintiff must show that his ancestor paid for the property. —9 W. R. 438.

42. Plaintiffs in possession, though in contravention of an Act IV award, do not need the Court's intervention to put them in possession; their omission to sue for possession is no bar to their suing for a declaration of title and confirmation of possession.—9 W. R. 580.

42*a*. In a suit to recover possession of land, where plaintiff shows peaceable possession till forcibly dispossessed, the Court need not go into his title if defendant fails to show any right.—10 W. R. 102; 12 W. R. 175; 23 W. R. 291, 293; 24 W. R. 22.

43. In a suit for immoveable property under a *kubala* more than 12 years old, where defendant pleads that plaintiff was only a *benameedar* and was never in possession, plaintiff must prove not only title, but also possession within 12 years of the filing of the suit.—10 W. R. 239.

44. A person suing for *khas* possession and obtaining a decree against defendant who set up an adverse title, is entitled to legal possession under s. 223 Act VIII.— 11 W. R. 63.

45. A suit for confirmation of possession must be dismissed if the allegation of possession is unfounded, but not if plaintiff is in possession of a part of the land in dispute. —11 W. R. 257.

46. In a suit to recover possession, not on the ground simply of spurious possession, but upon a distinct and definite title, if plaintiff entirely fails to prove his case, he is not entitled to a decree even if there is evidence that he was long in possession in one capacity or another.— 11 W. R. 301. *See also* 12 W. R. 203, 21 W. R. 121. *But see* 11 W. R. 465, 12 W. R. 111, 23 W. R. 204.

47. The conditions precedent to the success of any application or to the exercise of jurisdiction under s. 230 Act VIII are (1) that the applicant has been dispossessed, (2) that he disputes the right to dispossess him, and (3) that, on examination held, he can show probable cause for making the application.—12 W. R. 231.

48. A plaintiff suing for exclusive possession cannot obtain a decree for joint possession.—12 W. R. 248.

49. Where, in execution of defendant's decree, an Ameen measured a portion of plaintiff's land as covered by the decree, and delivered over possession thereof to the defendants as in execution of their decree, a cause of action arose to plaintiff against defendants.—12 W. R. 279.

50. Zemindars suing to recover *khas* possession are bound to prove their right to it; but they also have a right to a decision as to the alleged wrongful possession of defendants.—12 W. R. 365. *See also* 20 W. R. 121.

51. A decree for confirmation of possession cannot be executed so as to give the decree-holder possession of anything of which he is not already in possession.—12 W. R. 429.

52. A party suing for confirmation of possession on a certain title is bound by the title, except in a suit to recover immoveable property from which he has been ousted.—*Ib. See* 16 W. R. 218.

53. In an ordinary civil suit, not brought under cl. 6 s. 23 Act X or s. 15 Act XIV of 1859, a plaintiff cannot recover possession as against the undisputed owner merely by proving his previous possession and dispossession.— 14 W. R. 41.

54. In *mâl* cases the question of possession is dependent on the question of title; whereas in *lakheraj* cases the title may fail, and yet if possession as lakherajdars (*i.e.* possession without paying rent) is proved, that possession may be sufficient to give a lakheraj title.—14 W. R. 108.

55. Where a talookdar sues for possession of land contained in an under-tenure purchased by him at an execution sale, from some of which he alleges to have been dispossessed and as to the remainder his title is disputed, —*Held* that the *onus probandi* lay on him and that the deputation of an Ameen in such a case was improper.— 14 W. R. 190.

56. In a suit to recover possession of land which both plaintiff and defendant claimed to have reclaimed from jungle and to have possessed many years, and for which both claimed to have obtained pottahs from Government, the mere fact that the land was included in plaintiff's pottah was held to be insufficient to entitle him to a decree. —15 W. R. 45.

57. In a suit to recover possession of a share of an estate on the allegation that plaintiff had purchased it at a sale in execution of a decree and that he had been forcibly dispossessed by a purchaser at a sale in execution of a decree for rent, it having been found that plaintiff's purchase had not been *bonâ fide* but that the right, title, and interest of the decree-holder had been purchased *benamee* by the judgment-debtor himself.—*Held* that the real purchaser was the judgment-debtor and that the holder of the rent-decree could sell either the estate or the said right, title, and interest.—15 W. R. 54.

58. In order to a legal possession being given under s. 224 Act VIII, it is essential that all the requirements of that section be carried out.—15 W. R. 99.

59. In a suit to recover possession of property from which plaintiffs have been ousted by defendants who have no title at all, the latter cannot set up the title of a third party to defeat the claim of plaintiff, whose right moreover is not in any way affected by the fact of the suit not having been brought within the time limited by s. 15 Act XIV of 1859.—15 W. R. 278.

59*a*. Where a plaintiff in form seeks for *confirmation* of possession treating himself as being in possession, and yet sets out and states circumstances which are in themselves a dispossession, the suit should be treated as one really for *recovery* of possession.—15 W. R. 286, 16 W. R. 27, 24 W. R. 301, 25 W. R. 168.

60. In a suit for possession, a general consideration of the question of boundaries should not be gone into, until the spots of land claimed are accurately ascertained.— 15 W. R. 314.

PRACTICE (POSSESSION) (*continued*).

61. In a suit for possession of jungle lands, where there is no proof of acts of ownership having been exercised on either side, possession must be presumed to have continued with the person to whom they rightfully belong.—16 W. R. 102, 24 W. R. 410.

62. The auction-purchaser of a talook seeking to obtain possession from the former proprietors, many of whom are cultivators holding separate possession of specific portions and having their houses on the land, cannot sue them all in one suit, but must sue them separately for those portions to which they lay claim.—16 W. R. 155. *But see* 18 W. R. 26.

63. In a suit by a zemindar to obtain *khas* possession of land within his estate, if defendant be a middleman, the right of plaintiff follows as a matter of course unless defendant can make out his claim to exclude the zemindar; but if defendant be a ryot, plaintiff must show that he is a ryot liable to eviction.—16 W. R. 158.

64. An application in execution for possession asking for eviction of defendant is different from an application for possession under s. 224 Act VIII and may be refused where there are no grounds for refusing the latter except as to decree-holder's request for an order on the ryots to pay rent to him.—17 W. R. 236.

65. Where a purchaser at an execution sale of rights and interests in a share of a mouzah, sues for possession of that share, and the sale certificate sets forth the title passed by the sale and the boundaries of the estate, the Judge, instead of dismissing the suit because the sale certificate did not prove the boundary and the plaintiff had not proved the boundary, ought to have enquired whether the boundaries as stated in the sale certificate included any land other than the mouzah in question, and to have decided accordingly.—17 W. R. 344.

66. A Judge need not go into the question whether petitioner is entitled to relief under s. 230 Act VIII, when the parties are agreed that defendant has dispossessed plaintiff under color of a decree.—17 W. R. 375.

67. The legal principle that no suit for confirmation of possession will lie if possession at the time of institution of the suit is not shown, refers to cases where no possession of any kind is shown within a reasonable time before suit, and not where legal possession under a decree has been found.—17 W. R. 421.

68. Appellant had obtained a decree establishing her *mokurraree* right as purchaser from the heir to a former proprietor, against grantees from deceased widows. In taking out execution, she was opposed by respondents, who claimed as holding a dur-putnee granted in 1849 by the purchaser of the land, when it was sold for arrears due by the former putneedar. This claim was tried as a regular suit, and decided in favor of the respondents. *Held* in appeal that a proceeding before the Magistrate in 1841, which showed that actual possession was in the grantees of the widows, was conclusive, and that the possession of the grantees was referable solely to the title which was now vested in the appellant, and which could not be affected by the acquisition of the putnee title in 1849.—(P. C.) 18 W. R. 1.

69. Defendant's admitted possession for upwards of ten years was not allowed to be disturbed by plaintiffs who had failed to prove either title or possession.—(P. C.) 18 W. R. 91.

70. When a plaintiff sues for confirmation of possession and seeks a declaratory decree, he must make out his title affirmatively.—(P. C.) 19 W. R. 1.

71. A *putnee* right was proclaimed at the time of a sale in execution of a decree, and the decree-holder, having delayed to find security, was not put into possession, but the lands decreed were subsequently attached and sold under a decree obtained by others who purchased and entered on possession. The original decree-holder having brought another suit and obtained a decree for possession, —*Held* that the only intention of the last decree was to confirm the original decree-holder in the position which she occupied when the property was sold in execution of her original decree after proclamation of the *putnee* right; that she was not entitled to *khas* possession; and that, if she wanted a declaration as to the invalidity of the *putnee* right, she ought to have stated her intention unambiguously in her plaint.—19 W. R. 219.

72. Where the first Court found that, in a series of transactions with the Revenue Officers of Government, certain land in dispute had been treated as a part of plaintiff's mouzah without objection from the defendant, the Appellate Court was held to have been wrong in assuming that plaintiff was not in possession merely because he had failed to prove that he had taken any produce of this particular land.—19 W. R. 245.

73. Where a case was held to fall under s. 223 and not s. 229 Act VIII.—20 W. R. 204.

74. In decreeing a suit for *khas* possession of land on the strength of an *itmamee* pottah, where the defendant lessor (a co-sharer) contends that the lands are *ijmalee*, the Court should ascertain the precise lands and determine whether they belong exclusively to the defendant's share.—20 W. R. 344.

75. The Lower Appellate Court before reversing a decree in a suit to recover possession on the ground that there did not appear to have been any demand for possession, ought to frame an issue whether there had been a demand. —20 W. R. 401.

76. In a suit to recover possession and mesne profits of land claimed as part of an estate belonging to plaintiff and his ancestors, where the Lower Court made Government a party and concluded that plaintiff was estopped by the conduct of his father who repeatedly took from Government a farm of the villages in question after they had been declared not to be a portion of the estate,—*Held* that Government ought not to have been made a party, for plaintiff did not couch his plaint in any way adversely to Government, and that the father's acts did not estop plaintiff from instituting the present suit against the original defendants; also that, if plaintiff's possession was simply that of a tenant, then his right of suit, if any, would be against the Government for damages for wrongful ejectment, and not against third parties.—21 W. R. 192.

77. In a suit by a putneedar for a declaration of his rights and to obtain *khas* possession with costs and interests, on the allegation (which was found to be false) that he had been in *khas* possession and had been forcibly dispossessed by the defendants, where it was found that the zemindar (through whom plaintiff's title was derived) as well as his ijaradar had received rents from the defendants as jotedars,—*Held* that plaintiff had no right to treat defendants as trespassers and sue for direct possession, and was not entitled to determine their tenancy without proceeding to do so in a legal manner.—21 W. R. 237.

78. Where, on a suit for rent having been dismissed on the ground that defendant was not plaintiff's tenant, plaintiff sued her co-sharer and the same defendant to recover *khas* possession,—*Held* that the Court was not at liberty on such a plaint to find plaintiff entitled to possession as landlord and so to get symbolical possession.—21 W. R. 422.

79. Where a conveyance of property was made by a person who had been in possession and enjoyment for years before she was wrongfully ousted, the conveyance was held to give a right to sue for immediate possession.— 22 W. R. 99. *See also* 25 W. R. 223.

80. A suit instituted under s. 230 Act VIII cannot be tried as a regular suit without a proper plaint and stamp, unless the plaintiffs or petitioners complain of actual ouster.—22 W. R. 103.

81. In a suit to recover possession of a share in an estate on the ground that a private partition of the estate had been annulled by a decree, where defendant alleged that plaintiff was still in possession,—*Held* that plaintiff could have no cause of action unless he proved that he had been actually evicted from possession consequent upon the decree. —22 W. R. 105.

82. Where a plaintiff holding under a pottah from the zemindar sues to recover land of which defendant is in possession, he is entitled to recover unless defendant can show that he holds under a grant derived directly or immediately from the zemindar.—22 W. R. 326. *See also* 24 W. R. 123.

83. In a suit by an auction-purchaser for possession of certain rights and interests in joint property, where a part of the plaintiff's claim was disallowed in appeal, the Lower Appellate Court was held to have done wrong in raising the question whether plaintiff's predecessor was in separate possession, seeing that the parties who had a right to contest it were not before the Court.—22 W. R. 406.

84. Where land is waste and there is no visible sign of

PRACTICE (POSSESSION) (*continued*).

occupation, the possession must be taken to go with the right, and the right is *primâ facie* in the zemindar of the estate to which the waste land belongs.—22 W. R. 419.

85. In a suit to set aside a decree where plaintiff seeks to recover possession on the strength of his title, the Court is bound to try the question of title.—23 W. R. 21.

86. Defendant, the original tenant of the lands in dispute, got himself imprisoned for a long term of 16 years, making no arrangement for the management of the lands. Plaintiff went to the zemindar and obtained his leave to enter upon the lands and accordingly held them for more than 12 years, when he was ousted by defendant. *Held* that defendant's right as well as his remedy had become destroyed by plaintiff's possession for upwards of 12 years, whether through his misfortune or neglect.—23 W. R. 59.

87. The opinion that although at the sale at which plaintiff purchased the land in dispute as the lakheraj property of S, a wrong declaration was made with regard to the nature of the right which S had in it, still it being admitted that S held the property under some sort of legal right, plaintiff in virtue of his purchase was entitled to possession under that right without proving that the land was the lakheraj of S, was held to be bad in law.—23 W. R. 60.

88. In a suit for declaration of title and possession of an ancestral jote, instituted in consequence of defendant having successfully intervened as purchaser of the rights of the superior landlord of the plaintiff in a previous suit for rent brought by them against a *korfa* tenant, the plaintiffs are at liberty to prove their case quite as much by the fact that the landlord has received rent from them, as by the circumstance that they received rent from the *korfa* tenant. —23 W. R. 98.

89. In a suit for possession where the question is the right to undivided shares of property, a decree should not be given against some only of the shareholders for the recovery of a share, unless it is proved that those shareholders exclusively are in possession of it, and are interfering with plaintiff's enjoyment thereof.—23 W. R. 264.

90. In a suit by a landlord to recover possession, where defendant, who was a tenant-at-will, had received no notice to determine his tenancy, plaintiff may obtain a decree to come into operation at the beginning of the next year.—23 W. R. 399.

91. In a suit to recover possession, where plaintiff had held over the term of his lease and raised a crop which was appropriated by defendant (an adjacent tenant) on the ground that the disputed land was his alluvion,—*Held* that the *onus* lay upon the defendants (the adjacent tenant and the zemindar) to show that the land held by plaintiff was removed from the control of the owner of the estate by circumstances which brought it under the control of the defendant tenant; and that an admission made by the zemindar defendant would not be an estoppel in the other defendant's favor.—24 W. R. 108.

92. In a suit to recover possession of land acquired by plaintiff's vendor at an auction sale of the rights and interests of one S, where defendant claimed under a deed of sale from the same S, and the Lower Appellate Court found that plaintiff had been in possession and had been forcibly ejected by defendant,—*Held* that defendant's only title was the right to sue to set aside the execution-sale under which plaintiff held possession, and that this title did not avail him to eject plaintiff without a decree first obtained.—24 W. R. 117.

93. Where a tenant, holding over after the expiration of his lease, is wrongfully dispossessed, he has a right to be restored to possession; and he has the same right if, having been ejected during his lease, his lease expires pending a suit to recover possession. As against every one except the landlord, he is still the person entitled to possession.—24 W. R. 335.

94. Where a vendor is out of possession at the time when the property is sold, the purchaser is entitled to commence a suit for the recovery of the property.—25 W. R. 48, 223.

95. In a suit for possession of land the Lower Courts were held not at liberty to refrain from coming to any adjudication merely because there was some difficulty in ascertaining boundaries.—25 W. R. 77.

96. In a suit for possession between two rival tenants, where it is found that defendant is still in occupation of the disputed land as a tenant of the zemindar and that the zemindar has not chosen to eject him from the land, the mere production of a pottah alleged to have been granted by the zemindar to the plaintiff cannot of itself determine defendant's tenancy, nor entitle defendant to stand in the zemindar's shoes and either demand that notice to quit be served upon defendant, or that the suit be treated as such notice.—25 W. R. 132.

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Practice (Review).

1. A Judge has power, under Act VIII of 1859, to review an order passed by him in execution of a decree.—W. R. F. B. 66 (1 Hay 577, Marshall 205). *See also* 6 W. R., Mis., 127.

2. A Judge has power to grant a review of judgment after lapse of more than 90 days.—(F. B.) W. R. F. B. 84.

3. The fact of a Court wrongly estimating the evidence in a case is not a valid ground for a review of judgment.—2 Hay 269.

4. Before a review can be granted upon the ground of the discovery of new matter, it must be stated in the petition and proved that the new matter was not within the applicant's knowledge, or could not be adduced at the time when the decree was passed.—2 Hay 650 (Marshall 553). *See also* 2 W. R. 174; 10 W. R. 42, 432; 11 W. R. 197, 202; 12 W. R. 461, 536; 14 W. R. 26; 16 W. R. 7, 112; 17 W. R. 230, 458; 18 W. R. 413; 19 W. R. 130, 189; 23 W. R. 438. *See* (*F. B.*) 97 *post*. *But see* 18 W. R. 15, 316.

The new evidence is not sufficient *per se* to show that the previous decision is wrong, or that it must be such as to cause an overpowering balance of evidence.—22 W. R. 288. *See also* 23 W. R. 323.

5. A Judge was held not competent by a second order passed in review to amend, arbitrarily and without any specified reason, a prior order passed in review.—L. R. 157.

6. It is not a sufficient ground for a review to urge that the applicant may be able to prove an important document upon a re-hearing. He must at least show that he had the evidence, and that it was discovered since the former hearing.—Sev. 34.

7. S. 378 Act VIII of 1859 does not bar a second application for review of judgment after dismissal of the first.—W. R. Sp. 91.

8. Where a petition for review of judgment is presented after 90 days, the delay should be accounted for.—*Ib.* *See also* 17 W. R. 230.

9. Where a case admitted to review by one Judge is tried by another, the latter should try only the point directed by the order of review.—W. R. Sp. 141.

10. There is nothing irregular in granting in 1862 a review of a decision passed in 1854, and the order admitting the review was final under s. 378 Act VIII of 1859.—W. R. Sp. 232 (L. R. 15).

11. The Judge of the Lower Court cannot admit a review of his predecessor's judgment after the lapse of 90 days, unless just and reasonable cause is shown for the delay in the application.—W. R. Sp. 287. *See also* 6 W. R. 98, 167; 18 W. R. 286; 24 W. R. 295.

12. A Judge cannot, by transferring a case to his own file, confer on himself the power to review an order of dismissal of a suit pronounced by a Principal Sudder Ameen. His proceeding is one in excess of his jurisdiction, and may be corrected by the High Court under s. 35 Act XXIII of 1861.—W. R. Sp., Mis., 29 (L. R. 49).

13. The mere preferring of an appeal against a judgment does not bar the admission of a review of that judgment.—W. R. Sp., Mis., 31.

14. Expedition in presenting a petition for review is indispensable with a view to the hearing of a review before the same Judge who originally heard the case.—(P. C.) 3 W. R., P. C., 45 (P. C. R. 325).

15. Grant of review of judgment by Special Commissioners under Reg. III of 1828.—*Ib.*

16. Review not admissible by Revenue Courts against decrees passed by them in appealable cases.—1 W. R. 73.

17. A review of judgment can only be granted as regards those parties who appear or have applied for the review.—1 W. R. 222 (3 R. J. P. J. 274).

18. A second application for review of judgment can be admitted, although the first was rejected as founded on insufficient grounds.—1 W. R. 287, 2 W. R. 61.

19. Exposition of the law of review of judgment for the guidance of judicial officers.—2 W. R. 174. *But see* 22 W. R. 288.

20. S. 376 Act VIII applies to cases heard and decided in the presence of both parties, but not to the case of a person coming in under s. 119 and alleging that he had no knowledge of the suit.—2 W. R., Mis., 34. *See* 15 W. R. 431. *But see* 20 W. R. 284, 22 W. R. 213.

21. A petition of review ought not to be admitted after the time prescribed in s. 377 Act VIII without the leave of the High Court or a Judge.—3 W. R. 113. *See also* 14 W. R. 446.

22. A case should not be decided on the mere admission of an application for review; but a day should be notified for hearing.—3 W. R. 134.

23. A second application for review admitted erroneously may be rejected.—3 W. R. 191.

24. A Deputy Collector cannot review his order passed in execution of decree.—3 W. R. (Act X) 7 (4 R. J. P. J. 389).

25. The admission without new evidence of a review of a predecessor's judgment is not *per se* a ground of special appeal.—3 W. R. (Act X) 169. *See also* 11 W. R. 197. *See* (*F. B.*) 97 *post*.

26. Second applications to the High Court for the review of a judgment or order how to be preferred.—3 W. R., Mis., 3.

27. There is no review of judgment by High Court on a reference from a Small Cause Court.—3 W. R., S. C. C., 8 (S. C. C. 139).

28. A Judge is not prevented from proceeding upon an application for review by reason of a subsequent presentation of an appeal.—(F. B.) 5 W. R. 59.

29. *Quære.* Whether a review can be admitted by a Lower Court after an appeal has been preferred therefrom.—*Ib.*; 16 W. R. 112. *But see* 13 *ante*, and 36, 41, 47 *post*.

30. An order rejecting or admitting a review is not conclusive, but the Court may, in the exercise of its discretion, admit a second review even after a prior order rejecting it.—(F. B.) 5 W. R. 93. *See* (P. C.) 26 W. R. 50. *But see* 50 *post*.

31. Applications for review dismissed for mere default, may be re-admitted like appeals dismissed for default.—*Ib.*

33. Review not admissible of a judgment passed upon a compromise.—5 W. R. 226.

34. A Moonsiff cannot grant a review of his predecessor's judgment on personal grounds and after 8 months' delay.—*Ib.*

35. A Deputy Collector may entertain an application for a review of his predecessor's judgment.—5 W. R. (Act X) 94. *See* 43 *post*.

36. Where a plaintiff who has obtained a decree against one of two defendants appeals to the Judge to make the other jointly liable, the decree may be reversed meanwhile on review upon the application of the defendant against whom it was given.—*Ib.* *But see* 13, 29 *ante*, and 41, 47 *post*.

37. The High Court cannot entertain an application to review a judgment passed by it on appeal in a criminal case.—(F. B.) 5 W. R., Cr., 61. *See also* 17 W. R., Cr., 2. *But see* 18 W. R., Cr., 33.

38. *Semble.* No Criminal Court subordinate to the High Court has the power to review its own judgment.—(F. B.) *Ib.*

PRACTICE (REVIEW) (*continued*).

39. A Court should give reasons, on review of judgment, for coming to a different conclusion from that which it had previously formed.—6 W. R. 18.

40. An application for review was declared within time and admissible on a 2Rs. stamp by exclusion of the Dusserah vacation as *dies non*.—6 W. R. 19. *See* 12 W. R. F. B. 21.

41. A review of judgment may be proceeded with after an appeal has been filed against it.—6 W. R. 110. *See* 13, 29, and 36 *ante*, and 47 *post*. *But see* 48 *post*.

42. Where a Court, at the time of granting an application for review, heard the whole matter, so much of the order as granted the application was final, but so much as disposed of the case as on a rehearing was open to appeal. —6 W. R. 301. *See also* 10 W. R. 387, 13 W. R. 138.

43. A Judge has power to admit a review of his predecessor's judgment unless barred by the circumstances stated in s. 379 Act VIII.—6 W. R. 316. *See also* 11 W. R. 197.

But the power should be carefully exercised and only upon grounds of grave importance.—9 W. R. 125; 18 W. R. 198; 20 W. R. 313; 23 W. R. 438; 24 W. R. 387, 410; 25 W. R. 48.

And only in case of necessity.—(P. C.) 3 W. R., P. C., 45 (P. C. R. 325); 20 W. R. 313.

44. A record should always be kept by a Judge of all orders passed by him rejecting applications for review of judgment.—6 W. R., Mis., 108.

45. A Court has power to grant a review of an order which it has passed under s. 246 Act VIII. The order granting the review is final under s. 378.—7 W. R. 79. *See also* 18 W. R. 175. *See* (*F. B.*) 97 *post*.

46. Where a defendant, who was one of 27 defendants, had no reason to suppose that a decree for mesne profits against "the defendant" would have been executed against himself when he was not the person against whom the plaintiff sought for mesne profits in the original plaint, and came to Court for a review after the limited time, he was held to have had reasonable cause within the meaning of s. 377 Act VIII.—7 W. R. 166.

47. The preferring of an appeal against a decision by one defendant does not deprive another defendant of his right to apply for a review of the same decision with reference to s. 376 Act VIII.—*Ib. But see* 60 *post*.

48. A Lower Court has no jurisdiction to review a judgment appealed from, nor does an appeal lie from the judgment so passed on review.—7 W. R. 218.

49. Where the decision of a Lower Court is admitted to review, the suit becomes a new one, to be governed by precedents in force at the time of such admission (*e.g.* subsequent Full Bench rulings).—7 W. R. 408. *See* 11 W. R. 84.

50. A second review was refused when the first review was neither appealed against nor shown to be wrong.— 7 W. R. 464.

51. The order of a Lower Appellate Court granting a review of judgment after the expiration of 90 days from the date of the decree, without showing whether there was sufficient cause proved to its satisfaction for the delay, was held to be illegal under s. 378 Act VIII, and was with the subsequent proceedings thereon set aside in special appeal. —8 W. R. 184. (*Approved by P. C.*) Luchmun Singh.— 14 B. L. R.

52. A review granted without notice to the opposite party is not binding on him according to s. 378.—8 W. R. 304. *See* 18 W. R. 475.

53. Act VIII has removed the former inability of the Lower Courts to review their judgments without permission from a Superior Court.—8 W. R. 483.

54. A party applying, after Act VIII came into force, for a review of a judgment in appeal passed in 1840, is entitled to be governed by Reg. XXVI of 1814.—*Ib.*

55. Neither Act XIV nor s. 377 Act VIII limits the time after 90 days when an application for review may be filed. —*Ib.*

56. Application for a review, on new evidence, of a judgment of the late Sudder Court rejecting special appeal, was directed to be made to the Court of original jurisdiction instead of to the High Court.—8 W. R. 511.

57. A different enunciation of the law by the High Court does not constitute a "just and reasonable cause," within the meaning of s. 377, for a review of judgment after the time limited.—9 W. R. 102, 161, (F. B.) 181; 10 W. R. 26. *See* 13 W. R. 82.

58. If the parties are aggrieved by the Court refusing to call a witness, and have appealed in a regular way without taking the objection, they cannot take it afterwards on review and make it the ground for a review of judgment.— 9 W. R. 129.

59. An appeal lies from the order of a Lower Court deciding what is a just and reasonable cause for admitting an application for review after the prescribed period of 90 days has elapsed, and an Appellate Court has power to look at the reasonableness or sufficiency of the cause assigned for admitting such review.—(F. B.) 9 W. R. 181. *See* 11 W. R. 184, 12 W. R. 94, 13 W. R. 120, 17 W. R. 163, 18 W. R. 286.

60. The mere fact that a special appeal had been preferred and admitted in the High Court against a decretal order of a Lower Appellate Court prevents any party to the suit, no matter whether or not he be the party who preferred the special appeal, from having the right, under s. 376 Act VIII, of applying to the Lower Appellate Court for a review of the judgment upon which its decree was passed.—9 W. R. 301, 11 W. R. 511, 14 W. R. 438. *But see* 47 *ante*.

61. The pendency of a special appeal is not a "just and reasonable cause," within the meaning of s. 377, for allowing time over the 90 days.—9 W. R. 301.

61*a*. The provisions of Act VIII regarding reviews of judgments are applicable to orders passed under Act XXVII of 1860.—9 W. R. 394, 24 W. R. 376.

62. A review can be had to correct a clerical error in the judgment, after there has been a special appeal heard and determined; but such a review cannot be had to make a substantial alteration (*e.g.* as to an award of costs) in the judgment already appealed from.—9 W. R. 471. *See* 14 W. R. 438. *But see* 15 W. R. 414.

63. Reviews are not granted merely to supply defects on the part of pleaders in the conduct of appeals.—9 W. R. 589. *See also* 14 W. R. 105, 334; 17 W. R. 484; 19 W. R. 189; 24 W. R. 186, 430.

64. The Judges of the Sudder Court, admitting an application for review, were held competent to make a qualified order leaving, in the Court which was to review the decision, a discretion as to the extent to which the review should be carried.—9 W. R., P. C., 23.

65. Junior pleaders should be cautious how they certify for a review when they find that a case has been in the hands of more experienced Counsel who have declined to certify.—10 W. R 54.

66. An error on a point of law is a ground for a review of judgment.—10 W. R. 143.

Held *contra* that it is a matter for appeal and not for review.—24 W. R. 382.

67. Although s. 376 Act VIII makes mention only of reviews of judgment in respect to *decrees* of Court, yet it authorizes reviews of *orders* which are not, strictly speaking, decrees.—10 W. R. 345.

68. Where, in the absence from sickness of the plaintiff's pleader, a case is decided *ex-parte*, the proper course is to apply for a review.—10 W. R. 348.

69. Where a Lower Appellate Court, after affirming a decree to set aside a sale in execution, reviews its own judgment, the circumstance of the review being heard in the absence of the plaintiff is not an irregularity to be complained of.—10 W. R. 365.

70. The decision of a Full Bench, not upon a question of law, but upon the construction of a document, is not a ground for admitting a review of judgment after the time limited.—10 W. R. 415.

So also as to a decision of the Privy Council on a matter of fact.—18 W. R. 317.

And so as to a subsequent decision of a question of law by the Privy Council in another suit.—19 W. R. 189.

71. Where an application to be allowed to sue as a pauper was rejected as barred by limitation, and an application for review of that judgment was granted and the pauper plaintiff's suit decreed.—*Held* that the application for review not having been made within 90 days of the order to which it referred, and no just and reasonable cause having been shown for the delay, the application could not be entertained, and that the Court's decision in the suit was without jurisdiction.—11 W. R. 22. *See also* 18 W. R. 286. *But see* 13 W. R. 439.

72. *Quære.* When a Court refuses to allow a plaintiff

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to sue as a pauper, can an application for review of that order be entertained?—*Ib.*

73. Though ss. 377 and 378 Act VIII contemplate two classes of circumstances, there is nothing in them to show that the finding under the one section, and the order under the other, cannot be recorded in one and the same proceeding.—11 W. R. 56.

74. Merely adding to a decree an order that it should bear interest from its date is not a review; and an application for such an order is not governed by limitation under s. 377 Act VIII.—11 W. R. 141.

75. Where a Small Cause Court was held to have had jurisdiction, with reference to s. 21 Act XI of 1865, to allow a review, and to grant, after such review, a fresh decree.—11 W. R. 245. *See* 14 W. R. 412.

76. After execution has once been taken out against a ryot under s. 78 Act X, a Collector has no power to review his judgment or put the ryot back into possession of his land.—11 W. R. 246.

77. *Quære.* Whether under ss. 109 and 153 Act X a Collector has or has not power to review an order passed in execution.—11 W. R. 512.

78. The admission of the review of an *ex-parte* judgment by a Deputy Collector on the ground of non-service of notice, where the plaintiff, on notice being issued to him, appears and fails to show that the notice was served on defendant, is not a contravention of s. 58 Act X.—12 W. R. 195. *See also* 13 W. R. 237.

79. A Lower Appellate Court, admitting a review on grounds independent of fresh evidence, may, under s. 355 Act VIII, admit fresh evidence if necessary.—12 W. R. 223. *See* 14 W. R. 236, 16 W. R. 78.

80. Where a defendant in a suit decreed *ex-parte* obtains a reversal of it under s. 119 Act VIII, no application for review is necessary on his part.—12 W. R. 374.

81. Where a case has been remanded for the trial of an issue, an application for review cannot be granted.—12 W. R. 409.

82. A petition for the rectification of a decree (*e.g.* in respect of interest and mesne profits) is not different from an application for a review where the object of the rectification is to alter the decision of the Court; and such a petition cannot be received after 90 days without just and reasonable cause shown for the delay.—13 W. R. 33, 14 W. R. 62. *See also* 23 W. R. 433.

83. Plaintiff's suit having been decreed, the opposite party obtained a review setting aside that decree and declaring plaintiff's suit barred by limitation. Plaintiff hereupon applied for a review of both judgments, although in relation to the former judgment his application was not within time, urging that he had not been aggrieved by the first decree, and had therefore no occasion to ask for a review until the second decree was passed. *Held* that the words of s. 376 Act VIII supported plaintiff's contention.—13 W. R. 69.

84. Where a review is admitted by the sole remaining Judge of a Division Bench of the High Court which heard the case originally, the propriety of the order for admission cannot be questioned by the opposite party, nor, if the order be wrong, can such error be corrected, on the rehearing of the appeal.—13 W. R. 82.

84*a*. Review of judgments under Act X of 1859.—14 W. R. 27, 16 W. R. 159.

85. A Deputy Collector has no right to entertain a petition for review of judgment, under s. 58 Act X, after his decree has been modified by the Judge in appeal.—14 W. R. 414.

86. If a special appeal is presented and registered, it must be considered as "admitted" as used in s. 376 Act VIII, so as to bar a review of the judgment of the Lower Court.—14 W. R. 438.

87. A single Judge of the High Court of the N. W. P. was held to have jurisdiction under s. 27 of the Charter of that Court to try a case which was heard in review before four Judges of the late Sudder Court at Agra who were equally divided in opinion, and on which no final decision had been given in review at the time of the constitution of the High Court.—(P. C.) 15 W. R., P. C., 16.

88. It cannot be treated as a universal rule that no point can be raised on an application for a review which has been already discussed and decided in the original hearing of the appeal, or that no new point which has not been raised at the hearing of the appeal can be argued on the application for review. In each case the Court, to which application is made, must consider and decide whether a review is necessary to correct any evident error or omission, or is otherwise requisite for the ends of justice.—(F. B.) 15 W. R. F. B. 1. *See also* 17 W. R. 479.

89. A Lower Appellate Court should not allow points to be explained away on review by admitting additional evidence.—15 W. R. 9.

90. Where an applicant for review is not informed at the time of his application that his petition is insufficiently stamped, he cannot at the time of hearing be refused permission to make up the proper valuation.—15 W. R. 278.

91. Omission of Judge to try any point from mistake, may be a ground for an application for review, but not for special appeal.—16 W. R. 134, 150.

92. Where a case was remanded, and the petitioner not having appeared within a reasonable time, the Lower Court treated it as a case of default, whereupon petitioner made application under s. 376 Act VIII,—*Held* that this was not the proper form of procedure.—17 W. R. 70.

92*a*. The High Court may review an order rejecting an application to admit a special appeal, although it declined to do so in this case for want of satisfactory explanation.—17 W. R. 484. *See also* 18 W. R. 475.

93. Where a Subordinate Judge hears and disposes of an appeal referred to him by the District Judge under s. 26 Act VI of 1871, he does so as District Judge, and has therefore, by implication, the same power to review his judgment as a District Judge has under s. 376 Act VIII.—18 W. R. 292.

94. Where defendants having separate interests bring separate special appeals which are dismissed, and on an application for review on the part of two of them the decrees are modified but on grounds not applicable to all the defendants,—*Held* that, where the decrees are separate, the High Court cannot modify the decrees in which there is no application for review.—18 W. R. 464.

95. Where the plea that registration protects a tenure is not urged in the original hearing, and the title is found to have been procured fraudulently, it was not admitted as a ground for review.—19 W. R. 196.

95*a*. Even if a Subordinate Judge is competent to review his order confirming a sale in execution, the inadequacy of price is not "a good and sufficient reason" according to s. 376 Act VIII and particularly without notice to the auction-purchaser as provided by s. 378.—19 W. R. 227, (*affirmed by P. C.*) 26 W. R. 44.

96. Every Court has the power to revise its own decisions so as to make them, in terms, accord with the intention entertained at the time it was passed. But an inferior Court of limited jurisdiction does not possess the general power of revision.—19 W. R. 303. *But see* (P. C.) 26 W. R. 50.

It has no power *proprio motu* to alter or amend its own judgment without an application for review.—20 W. R. 281. *See* 98 *post.*

97. An order granting a review of judgment on the ground of discovery of new evidence can be questioned in special appeal on the ground that there was enquiry or proof that the new evidence was not within the knowledge of the applicant at the hearing, or could not be adduced by him before the decree was passed.—(F. B.) 20 W. R. 84. *See* 20 W. R. 426; 22 W. R. 183, 288, 399; 23 W. R. 438; 24 W. R. 186; 25 W. R. 324, 343; (P. C.) 26 W. R. 50.

98. The inferior Courts in the Mofussil have no jurisdiction to review their own judgments except under the circumstances and with the limitations set forth in the Code of Civil Procedure.—20 W. R. 180. *See* 96 *ante.*

99. Where a plaintiff who has obtained an incomplete decree applies for and obtains a review on the ground that he was entitled, upon the allegations and proofs on the record, to the full relief which he had sought, it is not open to the defendant then to cite witnesses whom he ought to have cited at the trial.—20 W. R. 225.

100. A mere refusal to grant a review of judgment cannot alter the judgment sought to be reviewed or the decree founded upon it, and nothing which the Judge says with reference to his refusal to grant the review can be bind-

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ing so as to alter such judgment or decree or operate as a bar to a subsequent suit under s. 2 Act VIII.—(P. C.) 20 W. R. 450.

101. It is competent to the High Court, on an application for review, to delay their final decision until a doubtful question of law has been settled by a Full Bench.—(P. C.) 20 W. R. 459.

102. Where claims for rent were decreed by a Deputy Collector on the basis of a decree for a kuboolcut, and the latter decree was subsequently set aside in appeal,—*Held* that the remedy open to the judgment-debtors under the former decree was to apply to the Deputy Collector for a review of his decision.—22 W. R. 161.

103. Under s. 376 Act VIII a review of judgment was held to be properly admitted on the ground that the party applying for it, although he knew of the existence of the new matter or evidence before, was unable to adduce it at, the time the decree was passed.—22 W. R. 446.

104. Where a Judge, who had ordered a certificate of guardianship to be granted under Act XL of 1858, granted a review of his order on one point,—*Held* that he had no power to re-open another question which he had already decided, and on which no application for review was made. —24 W. R. 427.

105. The power to admit a review, which is given by s. 376 *et seq* Act VIII, applies to an order rejecting an application for registration. (P. C.) 26 W. R. 50.

106. With reference to ss. 376 and 378, there is not an absolute defect of jurisdiction in a Judge to entertain an application for review, whenever the parties have failed to show that there was either positive error in law, or new evidence to be brought forward which could not be brought forward on the first hearing.—(P. C.) *Ib.*

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Practice (Suit).

1. A party made a defendant is entitled to a decision on his plea.—Sev. 783.

2. Under Act VIII of 1859 the Court will not entertain an application on summons for the discontinuance of a suit.—2 Hyde 184.

3. The Court, in ordering witnesses out of Court, will allow principals to remain except when cogent reasons to the contrary are shown.—2 Hyde 249.

4. A plaintiff will not be allowed to set up one case, and having proved another, to ask for issues to be raised to suit the proof; but when a plaint and its proof necessarily lead to one or more particular issues, it is the duty of the Court, if these issues do not come by surprise on the defendant, to raise such issues and to give the relief thereon to which the plaintiff is entitled.—2 Hyde 263.

5. The Court will not order a defendant to furnish the plaintiff with a list of documents till after the plaintiff shall have filed his written statement.—2 Hyde 279.

6. Suits partially decided before Act VIII of 1859 must be held to be pending under s. 387.—W. R. Sp. 35.

7. Under s. 138 Act VIII of 1859 a Court is not bound to send for more than the papers specifically mentioned in the application.—W. R. Sp. 272.

8. When parties themselves do not demur to an action, it may be presumed that there is no ground for it, and it is not for the Court to raise or determine on grounds not appearing in the statements of the parties before it.—W. R. Sp. 281 (L. R. 64).

9. The leave to file a supplemental answer given under s. 5 Reg. IV of 1793, did not warrant the defendant to make a totally new case, and state facts at direct variance with the statement in the first answer, and completely change the issue in the cause.—(P. C.) P. C. R. 231.

10. Objection to a proceeding that it is contrary to morality or public policy, should not be allowed if no issue has been presented by the pleadings or the points recorded for proof.—(P. C.) 3 W. R., P. C., 33 (P. C. R. 395).

11. Where a plaintiff on certain alleged facts seeks relief and is unable to obtain a trial of the facts by reason of certain conclusions of law which the Judge forms on the case in its then condition, the Courts are bound to proceed upon the facts as stated in the plaint and upon the assumption of the truth of those facts.—(P. C.) 5 W. R., P. C., 83 (P. C. R. 635).

12. In trying a question of fact, no Judge is justified in acting principally on his own knowledge and belief or public rumour, and without sufficient legal evidence.—(P. C.) 7 W. R., P. C., 27 (P. C. R. 683). *See also* Judgment 6.

13. A Judge may under s. 138 Act VIII send for and inspect any document filed with any record in his Court and may base his decision wholly or mainly thereon.—1 W. R. 63. *See also* 6 W. R. 79.

14. When the grounds invalidating defence in one case are inapplicable to other cases, these must be separately and specifically adjudicated.—1 W. R. 85.

15. Re-examination of witnesses and taking of fresh evidence not necessary where the record of a former suit, in which the same point was at issue between the same parties, has, by consent of parties, become the record in the present suit.—1 W. R. 310. *See also* 10 W. R. 37, 13 W. R. 184.

16. Meaning of the words "Revenue Office of the district or sub-division" used in s. 162 Act X of 1859 as the place where a suit for rent is to be instituted.—3 W. R. (Act X) 12.

17. A Collector's Court is bound under s. 65 Act X to try all material issues.—3 W. R. (Act X) 138; 6 W. R. (Act X) 105; 9 W. R. 246; 10 W. R. 169.

18. A Court ought not to decide a case merely upon the ground of variance between the allegation in the plaint and the proof.—5 W. R. (Act X) 62. *See also* 6 W. R. 168.

19. A Court should not, without explanation and enquiry, permit documents to be filed after most of the witnesses have been examined.—6 W. R. 25.

It may refuse to allow them to be put in as evidence at a very late stage of the case.—25 W. R. 26.

20. Where a day has been fixed for hearing witnesses, a Court is not competent to decide the case before that day in the absence of the witnesses, on the ground that no amount of witnesses would be believed.—6 W. R. 60.

21. The Courts in India are not governed by the technical rules of pleading which obtain in Courts administering English law.—7 W. R. 39.

22. Although a case may be set down for final disposal, yet, if it is clear that further evidence is required, the Judge is bound, under s. 145 Act VIII, to adjourn the case, unless he is satisfied that plaintiff has, without sufficient cause, failed to produce his evidence.—7 W. R. 84, 21 W. R. 226.

23. Decree for part of claim.—*See* Dismissal of Suit or Appeal 2.

24. A Judge is not bound, under s. 138 Act VIII, upon the application of any of the parties to a suit, to send for the record of any other suit.—7 W. R. 109, 18 W. R. 13. *See also* 24 W. R. 136.

25. An equitable defence may be set up at the trial, although not put forward in the written statement.—7 W. R. 120.

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26. When a defendant pleads a jagheerdar's proprietary rights against a malik's, the Court cannot award a subordinate right of occupancy not arising out of the right pleaded.—7 W. R. 145.

27. The issues should be framed from all questions of law or fact upon which the parties may be at issue, and collected, not merely from the plaint, nor from the written statements, but from the oral statements of the pleaders also.—8 W. R. 162, 15 W. R. 286. *But see* 10 W. R. 28.

And from the evidence adduced.—16 W. R. 44.

28. S. 139 Act VIII authorizes a Court to frame issues on allegations collected from the oral examinations of the parties or their pleaders, notwithstanding there be a discrepancy between those allegations and the written statements.—8 W. R. 351, 12 W. R. 512, 16 W. R. 218.

29. Courts of first instance should not, after a suit is finished, accept fresh evidence without good reason.—8 W. R. 461.

30. Where a Judge transfers a suit to his own file after the Principal Sudder Ameen has fixed the issues and recorded evidence, he must take the evidence *de novo*.—8 W. R. 465.

31. Mode of procedure by Revenue Courts under Act X in regard to fixing a day for hearing.—9 W. R. 246.

32. A plaintiff cannot be entitled to relief upon facts or documents not stated or referred to by him in his pleadings. Thus where plaintiff sued upon a simple money-bond, and afterwards tendered in evidence another bond by which the principal defendant purported to secure a further advance on the security of her zemindaree estates,—*Held* that plaintiff's cause of action upon the first bond on which he sued lay only against the principal defendant, and that plaintiff could not, relying on the second bond, proceed against the other defendants.—9 W. R., P. C., 9.

33. Where plaintiff does not establish his case, the Lower Court should not go into defendant's case and give plaintiff a decree because defendant has failed to prove his case.—10 W. R. 211, 24 W. R. 330. *See* 47 *post*.

34. Act VIII does not authorize a Court to try a different cause of action from that set out in the plaint.—10 W. R. 212. 15 W. R. 211.

35. A Corporation must sue and be sued in its corporate name. S. 26 Act VIII points out how a Corporation is to be described in the plaint, and s. 63 how process is to be served on a Corporation.—10 W. R. 366. *See also* 15 W. R. 534.

36. In a suit to recover land alleged to have formed part of a joint estate but to have been subsequently divided into separate shares,—*Held* that, on failure of proof of the allegation of partition, plaintiff may obtain relief on the first allegation, and the Court below is not barred by law from framing an issue accordingly.—12 W. R. 107.

So also where plaintiff rests his case on a mortgage as well as a deed of sale, and fails as to the latter.—20 W. R. 72.

37. A plaintiff who sues on one title cannot succeed on another entirely different.—11 W. R. 301, 550; 12 W. R. 202, 248; 15 W. R. 84; 24 W. R. 441. *But see* 19 W. R. 195.

38. Not the written statements of parties, but the issues framed under Act VIII, are the index of what has been, and what has to be, adjudicated.—12 W. R. 229, 14 W. R. 181. *See* 58 *post*.

39. Where plaintiffs claim on an alleged title, and their allegation is not traversed by defendant, their position requires no further proof.—12 W. R. 469.

40. Where a suit dismissed by a Deputy Collector, who dies before recording judgment, is made over for trial to his successor, the latter is not obliged to examine witnesses and take evidence *de novo* unless requested by the parties to do so.—13 W. R. 76.

41. A Court is not bound in any case to raise or try an issue upon the existence of a right, unless the party who possesses the right asserts its existence and claims to have his title tried.—13 W. R. 216.

Nor is it bound to decide any question not raised in the plaint.—21 W. R. 132.

42. According to s. 65 Act X, the issues to be decided under that Act should be framed principally from the examination of the parties.—*Ib.*

44. In a suit on a registered bond in which defendant asked the Court to send for the registration books with a view to prove the non-existence of the bond at the time it purported to be certificated, but had failed to summon the Deputy Registrar,—*Held* that it was not necessary for the Judge to use the discretion given him by s. 138 Act VIII.—14 W. R. 302.

45. Where there is a general feeling in a district against a party to a suit, and such party feels that he is not likely to have a fair trial before the local Judge with that feeling in the district against him, his proper course is to petition the European Judge to remove the case into his own Court and to try it in the first instance.—(P. C.) 15 W. R., P. C., 8.

46. Where a suit is brought against two persons, it is competent to the Court to raise an issue whether one of them is solely liable, and on finding that one only is liable to pass a separate decree against that person.—15 W. R. 69.

47. Plaintiff's claim must stand or fall upon the strength of his own case.—15 W. R. 84. *See* 33 *ante*.

48. Where a number of cases are instituted against the same defendant relating to the same matter, and plaintiff applies to have them all tried together, the Judge ought not to try one separately and dispose of the others as governed by his decision in that one case.—15 W. R. 110.

49. Issues are to be fixed under s. 139 Act VIII when both parties appear. The Court is not bound to fix any issue when the defendant does not appear, but ought to proceed under s. 111 to hear the case *ex-parte*.—15 W. R. 145.

50. Before a document can be inspected under s. 138 Act VIII, the Court must see whether it comes under the description of a public record.—15 W. R. 173.

51. Where, if defendant had not appeared, the Court would have been bound, under s. 113 Act VIII, to adjourn the hearing on the ground that sufficient time had not been given,—*Held* that his appearing ought not to put him in a worse position, and that time should be given him to produce evidence.—18 W. R. 141.

52. It is the duty of a Court to act upon the issues and proofs in the case, and not to throw aside the whole evidence and to give effect to its suspicion.—(P. C.) 18 W. R. 183.

53. Where *Khusrah* papers which formed the very essence of the action were not filed or produced by the plaintiff within the time prescribed by law, the Court was held justified in rejecting them when subsequently tendered in evidence.—18 W. R. 515.

54. How a Court which has to deal with facts should take up the evidence.—19 W. R. 213.

55. When several cases are before a Court, and the subject of suit and the defendants vary with each case, the Court has no authority to order them to be tried as one case against the will of the parties; and without the consent of the parties no such consolidation can be effected by the Court as to make the evidence given by any party in one case evidence in all the cases.—21 W. R. 196.

But where parties to other suits agree to abide by the result of the decision in one, the suits should be analogous, so that one decision might decide all the questions at issue.—23 W. R. 383.

56. The parties to a suit have a right to insist upon a public hearing of the whole case before the same Judge, although they may, either expressly or impliedly, consent to the suit being determined by a Judge who has not been present throughout the trial and to his taking into consideration evidence which has not been given before him.—21 W. R. 196.

57. Where the plaint contained an averment that the 2nd defendant, who was the 1st defendant's servant, committed the wrongful act complained of illegally and maliciously, and the Judge below dismissed the suit against the 2nd defendant but allowed it to proceed against the 1st defendant,—*Held* that the plaintiff ought not to have been put to the option of abandoning his suit against either the 1st or 2nd defendant, but that the suit should have been tried out, and that, after the evidence had been heard, the judgment of the Court should have been given against the party whose liability was made out; also that the allegations contained in the plaint against the several defendants were distinct but not inconsistent, and although, if malice were directly proved against the 2nd defendant, he alone might be liable, yet on the plaintiff abandoning that allegation, or failing to prove it, he might

PRACTICE (SUIT) (*continued*).

be entitled to a verdict against the 1st defendant.—21 W. R. 199.

58. A defendant is not precluded from setting up a defence which does not appear in his written statement when the plaint does not set forth the true facts.—21 W. R. 407.

59. A Court in which a suit is pending may send for the records from any other Court, the ordinary rules of that other Court notwithstanding.—22 W. R. 355.

60. Unless a party asks the Judge to postpone his decision in order to enable him to produce his evidence in support of his side of the case, the Judge is competent to determine the case on the day when the issues are settled, if he is satisfied that the evidence then before him is decisive of the matter in dispute between the parties.—22 W. R. 426.

61. A Court is not under any obligation as to the order in which it is to try the issues which are raised before it, but may dispose of them in the way which is considered most likely to conduce to the ascertainment of the truth.—23 W. R. 54.

62. Where a number of defendants are interested in resisting a suit, judgment cannot be given against all unless there is evidence which binds them all.—23 W. R. 80.

63. A plaintiff's case ought not to be prejudiced by his omission to bring proof specifically on a point which was not put in issue.—23 W. R. 292.

64. A Judge was held wrong in dismissing a rent-suit because it was brought as a civil suit and not under Act VIII of 1859 (B. C.); that Act merely restores to Civil Courts the powers taken from them by Act X of 1859.—25 W. R. 417.

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Stamp Duty 11.
Suit 6.
Summons.
Time 2.
Title 19.
Value of Suit or Appeal 2, 3.
Verification 1.
Withdrawal of Suit or Appeal.
Witness 9, 17, 27, 29, 42, 50, 61, 62.
Written Statement 1.
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Pre-emption.

1. The right of — according to Mahomedan law may be exercised upon a re-sale of the property, after a previous sale which has fallen through and with respect to which no claim of — was made. -1 Hay 32 (Marshall 11). *See also* 7 W. R. 206.

2. It cannot be exercised by a judgment-creditor in respect of the sale of property in execution of his decree.—2 Hay 651 (Marshall 555).

3. The facts which constitute the cause of action in a claim to — under the Mahomedan law should be distinctly stated in the judgment. --Sev. 289.

4. The right of — under the Mahomedan law does exist by custom among Hindoos in Behar and other provinces of Western India.- (F. B.) W. R. F. B. 143 (Sev. 456*a*), W. R. Sp. 259. *See* 13 W. R. F. B. 21; 13 W. R. 189; 17 W. R. 264.

It also prevails by custom against Hindoos in Jessore.—13 W. R. 124. *See* 5 W. R. 279, 7 W. R. 210.

And so in Bhaugulpore.—25 W. R. 499.

Not proved to prevail among the Hindoos of Chittagong.—1 W. R. 234; 5 W. R. 237; 9 W. R. 537.

Nor amongst Hindoos in Purneah.—11 W. R. 251.

Nor between Mahomedans and Hindoos in Sylhet.—1 W. R. 250. *But see* 15 W. R. 223.

5. In a suit for — under the Mahomedan law, it was held necessary to find whether plaintiff had notice of the previous sale, and whether he at that time refused to pay the price for which the land was in fact sold, or whether he claimed the right of — within a reasonable time after the fact of sale came to his knowledge. —Sev. 364.

6. An enquiry is necessary in such cases as to whether all the conditions of — required by Mahomedan law have been fulfilled.—Sev. 370.

7. Under the Mahomedan law it is essential to the right of — to prove the performance of the *tullub-i-ishtahad*. —W. R. Sp. 60; 8 W. R. 463; 13 W. R. 177; 14 W. R. 265; 18 W. R. 530; 22 W. R. 184.

8. Where a Mahomedan claims — against a Hindoo under Mahomedan law, there must be a distinct plea of custom as a plea of fact.—W. R. Sp. 74.

9. In a suit for — proof of the preliminaries prescribed by the Mahomedan law is essential.—W. R. Sp. 117, 351 (L. R. 127); 11 W. R. 404; 17 W. R. 264; 25 W. R. 12.

The preliminaries being *tullub-i-mowasibut* and *tullub-i-ishtahad*. —10 W. R. 119; 11 W. R. 307. *See also* 13 W. R. 177; 14 W. R. 265; 24 W. R. 462, 499.

10. According to Mahomedan law, the affirmation by witness need not be made by the claim of the right of — in person, but may be made by agent.—W. R. Sp. 219; 12 W. R. 484.

11. According to Mahomedan law, where either seller or buyer repudiates the sale, there can be no sale; so neither can there be any right of — in such a case.—*Ib. See also* 8 W. R. 255, 500: 11 W. R. 71.

12. A transfer without consideration is not a sale to which the right of — attaches.—W. R. Sp. 238 (L. R. 33), 2 W. R. 78.

13. The delay caused by a claimant springing up from his seat to assert his right of — is not sufficient to entail forfeiture of that right.—W. R. Sp. 294 (L. R. 77), 13 W. R. 259.

14. A person having been offered his right of — and having refused it, cannot afterwards re-assert that right as against a sale made with his direct permission to a third

PRE-EMPTION (*continued*).

party.—W. R. Sp. 311 ; 18 W. R. 401. *See* 11 W. R. 480 ; 15 W. R. 247.

He must be deemed to have waived his right.—24 W. R. 198.

15. According to Hindoo law — is not a right, but it is only allowed and practised by custom in some places. Before it can be claimed anywhere, its existence there as custom must be proved.—W. R. Sp. 317 (L. R. 95). *See also* 8 W. R. 204 ; 13 W. R. F. B. 21.

16. Where a party sues under a title by — to an estate which has been sold, he cannot claim to recover money paid as revenue on account of the estate, until the — suit has been decided.—W. R. Sp. 373.

17. In an imperfect, as in a perfect, *putteedaree* village, the shares in each *puttee* have a preferential claim to — in that *puttee*.—1 W. R. 233 ; 2 W. R. 10, 17 ; 5 W. R. 169 ; 10 W. R. 314 ; 11 W. R. 71. *See* 62 *post*.

18. A right of — does not bind the claimant to carry money in his hand and tender it to the first purchaser (at the time of making his demand).—2 W. R. 10 ; 10 W. R. 211 ; 11 W. R. 71, 275 ; 22 W. R. 4.

19. A right of — is lost where there is a dispute as to amount of purchase-money (*e.g.* where plaintiff claims so much land at such a price and that claim is shown to be unfounded).—2 W. R. 38, 7 W. R. 210.

20. No right of — arises on a mere conditional sale or mortgage while any right of redemption remains in the mortgagor.—(F. B.) 2 W. R. 215 ; 10 W. R. 246. *But see* 6 W. R. 116.

21. A mere declaration of an intention to exercise a right not yet accrued, is not a claim of a right of —. It is immaterial whether a formal demand of — is made at any other time than after the sale became absolute.—*Ib.*

As soon as a contract is ratified by acceptance, and the vendor has gone so far that he cannot legally draw back, it is time for the pre-emptor to step in.—22 W. R. 4.

22. A claim to right of — on the ground of vicinage alone will not lie in the case of large estates, but only when either houses or small holdings of land make parties such near neighbours as to give a claim on the ground of convenience and material servience.—2 W. R. 261. *See also* 8 W. R. 2, 310, 413 ; 10 W. R. 356 ; 11 W. R. 251, (*affirmed by F. B.*) 14 W. R. F. B. 1.

23. A right of — cannot be asserted as to only a portion of lands to be sold.—2 W. R. 285, 10 W. R. 379, 14 W. R. 469.

But where two perfectly distinct estates are sold, as to one of which a party has a right of —, and as to the other not, it would be unreasonable to hold, either that he could claim both properties or neither. The only reasonable rule seems to be that he can claim that property as to which his right of — would attach if it were sold separately.—25 W. R. 499.

24. Where there is a plurality of persons entitled to the privilege of —, the right of all is equal without reference to the extent of their shares in the property, and none is entitled to preference on the ground of being a neighbour.—3 W. R. 71, 7 W. R. 150.

25. The claimant for — must make the preliminary declaration. Going into his house to get the money before making the preliminary declaration is not a compliance with the law.—5 W. R. 203.

26. The right of — by a Mahomedan as against a Hindoo purchaser can only be enforced in Tipperah after proof of the right or custom existing generally in that part of the country in cases in which Mahomedans are not, or only partially, concerned.—5 W. R. 270. *See* 13 W. R. F. B. 1.

27. A delay of one day will not affect a right of —.—6 W. R. 173. (*Over-ruled by F. B.*) 16 W. R. F. B. 13 ; *and see* 13 W. R. 259.

28. The ceremony of affirmation should be carried out before either the vendor or the purchaser, or be performed in the premises.—*Ib.*

Or in the presence of the person in possession of the lands, whether he be the vendor or purchaser.—16 W. R. 3.

29. No right of — can exist under the Mahomedan law as against a coparcener.—6 W. R. 250. *But see* 13 W. R. 124.

30. The custom of — as applicable to Christians in Bhangulpore, must be proved on the same principle as has been applied to Hindoos in Behar.—*Ib.*

So also as to Christians in Behar.—8 W. R. 446.

31. Claims to — of *putteedaree* estates in Sylhet, under s. 14 Act XXIII of 1861, how to be asserted.—6 W. R, Mis., 3.

32. The right of — accruing during minority is not to be kept suspended until majority.—7 W. R. 86.

33. A claim to mesne profits due before the date on which a right to — arose, cannot form the subject of —.—7 W. R. 117.

34. The proceedings in two former suits where, under similar circumstances, though the exercise of the right was disputed on other grounds, the existence of the right was admitted, may be received in evidence in support of the custom, as forming a well-known exception to the usual rule which excludes *res inter alios acta*.—7 W. R. 210.

35. In a suit to enforce a right of —, the purchaser need not be put on his oath, except the case cannot be decided on other evidence ; the evidence for the plaintiff being preferred only where the evidence is evenly balanced.—7 W. R. 211, 486.

36. The Mahomedan law of — was never intended to apply to a case where the purchaser is not a stranger, but is either a shareholder or neighbour.—7 W. R. 260. *See* 16 W. R. 107.

37. A claim to — should be made as soon as the claimant becomes aware of the completion of the sale.—7 W. R. 428. *See also* 13 W. R. 259.

38. The right of — applies only to sales, and not to a lease in perpetuity with a rent reserved.—8 W. R. 107, 25 W. R. 43.

39. The Mahomedan law does not recognise the right of — in favor of a mere tenant upon the land.—8 W. R. 437.

40. The right of — is not matter of title to property, but is rather a right to the benefit of a contract.—8 W. R. 446. *See also* 15 W. R. 223.

41. When a contract has been entered into for the sale and purchase of certain property, a pre-emptor is not bound to defer the enforcement of his right till the bill of sale is delivered or registered or payment made.—8 W. R. 500. *But see* 8 W. R. 255.

42. Mere possession gives no *huk shuffa* according to Mahomedan law, there must be ownership (*milik*) in the contiguous land.—9 W. R. 455.

43. A decree for — cannot be made conditional on payment of money within a specified time.—10 W. R. 53.

44. Where a plaintiff sues to enforce her right of — in property sold as belonging to several co-sharers some of whom are minors, and in appeal withdraws her claim as regards the minors, such withdrawal entirely invalidates her claim to enforce her right of—.—10 W. R. 111.

45. Where several purchase from one, the *shuffee* may take the proportion of any one of them ; but when one purchases from several, the *shuffee* may take or relinquish the whole, but not any particular share.—*Ib.*

46. Act I of 1841 and s. 14 Act XXIII of 1861 are not applicable to permanently settled estates in Sylhet, nor (unless extended) to the estates in any district in Bengal.—10 W. R. 165.

47. When property is sold by public auction in execution of a decree, and the neighbour or partner has an opportunity to bid for the property as other parties present in Court, the law of — cannot apply to such sales.—*Ib.* *See also* 15 W. R. 455.

48. A plaintiff suing to establish a right of — on the ground of co-partnership with the vendor, cannot obtain a decree by right of vicinage.—10 W. R. 189.

49. The right of — appertains to a partner with immunities and appendages of the land, such as the right of water.—10 W. R. 314. *See* 15 W. R. 225, 17 W. R. 343.

50. Possession of a separate share of an estate divided by *butwarra*, gives the owner no right of — as a *shuffa khuleet* over the remaining portion.—11 W. R. 169, 215. *See* 15 W. R. 225, 16 W. R. 110.

51. No custom prevails among Hindoos, giving a right of — on the ground of vicinage.—11 W. R. 251.

52. According to Mahomedan law, before a right to — can arise, there must be a cessation of the ownership in the property sold.—11 W. R. 282. *See* 18 W. R. 401.

53. The fact of water flowing from a *dighee* over plaintiff's land to the land in dispute was held sufficient to establish plaintiff's claim as *shuffa khuleet*.—12 W. R. 162.

54. A partner's right of *shuffee* is not extinguished until

PRE-EMPTION (*continued*).

a formal division has taken place defining each co-proprietor's share.—12 W. R. 484.

55. Where no local custom exists with regard to — amongst Hindoos, the Mahomedan law of — on the ground of co-partnership or of vicinage does not apply when the person claiming the right of — and the vendor are Mahomedans and the purchaser is a Hindoo.—(F. B.) 13 W. R. F. B. 21. *See* 13 W. R. 332, 15 W. R. 223, 18 W. R. 440, 24 W. R. 95.

56. The term *shureek* cannot be restricted to cases in which the parties enjoy the property jointly.—13 W. R. 124.

57. A *shureek* (or partner in the substance of the thing sold) is preferred to a *shuffa khulect* (or partner in the rights of water or way); and where plaintiff sues as *shureek*, the Court ought not to raise the issue as to whether he claims as a *shuffa khuleet*.—13 W. R. 189. *See also* 15 W. R. 225.

58. The *tullub-i-mowasibut* was held not performed where the claimant went from his own house to the land in dispute, before he made his demand.—13 W. R. 259.

And where the claimant, though aware of the sale of the property three or four days after execution of the deed of sale, did not make his claim until a month and two days after the deed was registered.—25 W. R. 9.

The mere fact that a pre-emptor takes a short time to ascertain whether the news of the sale is correct or not does not invalidate the *tullub-i-mowasibut*.—13 W. R. 299.

59. The right of — accrues on the completion of a contract by purchase and sale, and is not injured or dissolved by any subsequent dissolution of the contract.—13 W. R. 332.

As to former.—20 W. R. 216.

60. Where Hindoos have adopted the Mahomedan law of — as amongst themselves, a Mahomedan may enforce that right against them.—*Ib.*

61. A plaintiff having a right of — to property sold, is entitled to have the property at the price agreed upon between vendor and purchaser, but not to the benefit of an arrangement by which a portion of the price has been allowed to remain in the purchaser's hands that he may pay off a mortgage debt.—13 W. R. 435.

62. A partner, not in a house or small enclosure, but in a considerable estate, has a right, according to Mahomedan law, to — when one of his co-sharers in such estate sells his share to a stranger.—(F. B.) 14 W. R. F. B. 1. *See* 17 *ante* and 14 W. R. 266, 365; 15 W. R. 223.

63. A party who claimed certain land by right of — and failed to set up her rights in a suit in which the purchaser of that land sued her for possession and obtained a decree, is not entitled to bring a fresh suit to enforce the same rights.—14 W. R. 272.

64. In order to establish a right of — on the part of a sharer, it is not necessary that the property sold should be actually separated or defined.—14 W. R. 365.

65. Properties having separate numbers in the Collector's rent-roll are separate estates in the legal sense of the word "estates," implying such a separation as bars a claim to — on the ground of coparcenary.—14 W. R. 476.

66. Public thoroughfares give no right of —.—15 W. R. 225.

67. It is not a binding rule of law that the *tullub-i-ishtahad*, if made within a day after the receipt of intelligence of the purchase, necessarily is in time for the preservation of the right of —; the due and sufficient observance of that formality, as to time, is a question to be decided in each case by the Court which has to deal with the facts.—(F. B.) 16 W. R. F. B. 13.

68. A coparcener has a higher right of — than a neighbour.—16 W. R. 107.

69. Where the right of — was claimed by a Hindoo and the vendor was a European, it was held that the right arose from a rule of law by which the owner of the land was bound, and which existed no longer if there ceased to be an owner who was bound by the law either as a Mahomedan or by custom; and that the right was not a mere personal one in the pre-emptor, who had it only as a co-sharer or neighbour and lost it on his ceasing to be either.—18 W. R. 440.

70. A party who, through execution proceedings, obtains possession of land which is bound by a right of —, ought to have the benefit of the purchase-money which the pre-emptor is to pay.—20 W. R. 216.

71. A guardian is not competent to assert a right of — and make a contract of purchase on behalf of a minor, borrowing money in order to complete the purchase, and thereby binding the minor.—20 W. R. 372.

72. On the question of — the Court must act in strict accordance with the provisions of the Mahomedan law rather than on what it thinks just and equitable.—22 W. R. 4.

73. In a suit to establish a right of —, where the plaint is framed on a right of *shuffa khuleet*, plaintiff ought not to be allowed to shift his ground and make out a new case as *shuffa jah*.—24 W. R. 355.

See Evidence (Oral) 19.
Husband and Wife 3.
Limitation 63.
„ (Act XIV of 1859) 119.
Mortgage 66.
Onus Probandi 50, 151, 161.
Partition 7.
Stamp Duty 61.
Value of Suit or Appeal 11.

Pregnancy.

See Capital Punishment 1, 2, 3.
Hindoo Law (Inheritance and Succession) 66.
Marriage 8.

Prescription.

1. In the case of parties who have no legal title, a possession of 60 years, and not of more than 12 years, is necessary to create a title by —.—W. R. Sp. 102. *But see* 17 W. R. 490.

2. Long and undisturbed user or possession confers title by — because it is presumed to be founded on title.—6 W. R. 82.

But no particular period is necessary to establish the right.—11 W. R. 236, 12 W. R. 274. 13 W. R. 440, 14 W. R. 199. *But see* 11 W. R. 522.

3. *Quære.* Whether a title to land can be gained by — without adverse possession, *i.e.* by a holding for a great number of years without payment of rent or other acknowledgment of tenure.—6 W. R. 215.

4. A user *all along* or *from before* does not necessarily prove a right. Its existence must be proved from a time from which the right would be gained or presumed to have been gained.—7 W. R. 1. *See also* 14 W. R. 349.

5. A user for four or five years is not sufficient to establish a right by —.—7 W. R. 276, 11 W. R. 522, 12 W. R. 76, 16 W. R. 198. *See* 12 W. R. 274. *But see* 11 W. R. 236.

A user for at least 20 years is necessary.—20 W. R. 328, 25 W. R. 15.

6. The English — Act does not apply to the Mofussil.—9 W. R. 91. *See* 11 W. R. 236.

7. A title by — cannot be created by length of user short of 12 years, the ordinary period prescribed by the Statute of Limitations.—9 W. R. 283, 11 W. R. 522, 12 W. R. 76. *See* 16 W. R. 198.

8. Where a Lower Appellate Court finds a right of user proved, its decision cannot be interfered with in special appeal even though not very distinct as to the period for which such right has been enjoyed.—11 W. R. 285. *See also* 11 W. R. 522.

9. A title by — may be acquired by long possession, but it must be a possession not merely permissive but *as of right, e.g.* in the capacity of a master, or in the case of easements as the owner of the land.—13 W. R. 344.

Nor must the user be from time to time interrupted.—13 W. R. 449.

10. Prescriptive rights are founded on the presumption of a grant from long-continued uninterrupted user and enjoyment as of right.—15 W. R. 212.

11. A right by — acquired under s. 27 Act IX of 1871 on proof of peaceable and open enjoyment without interruption for 20 years, must be strictly and clearly defined.—16 W. R. 198.

PRESCRIPTION (*continued*).

S. 27 makes no difference between rights of way and rights of water.—20 W. R. 283.

12. There can be no prescriptive right to throw earth into another's tank.—20 W. R. 237.

See Building 10.
Declaratory Decree 26.
Easement 1.
Endowment 10.
Evidence (Oral) 29.
Market 1.
Municipal 19.
Occupancy 53.
Possession 7.
Right of Way 9, 15.
Right to Light and Air 1, 3, 7.
Water 9, 10, 12, 14, 19, 21.

Presumption.

See Evidence (Presumptions).

Primogeniture.

1. The custom referred to in Reg. XI of 1793, according to which estates were not divisible, refers to extensive zemindarees or principalities denominated *raj*, and not to petty estates.—Sev. 158.

2. Where a suit was brought by two younger brothers, in accordance with Mahomedan law, for their shares of a property which was held by an elder brother, and which had been held by a succession of elder brothers for a long course of years, two of the members having in former trials had their right to exclusive inheritance upheld by formal decisions, -*Held* that, in the absence of any sunnud declaring to the contrary, the property did not descend according to the general rules of inheritance, but according to the rules of —.—25 W. R. 199.

See Forfeiture 22.
Hosaipore Raj.
Limitation (Act XIV of 1859) 281.
Pacheet.
Rawutpore.

Principal and Agent.

1. An agent cannot, without express authority, appoint a general agent in his own place.—S. C. C. 55.

2. Where a general manager of an indigo factory, but without any special authority to borrow money, did not sign the contract as agent, and it was not shown that the money borrowed was expended on account of the factory, he was held personally liable.—S. C. C. 61.

3. Where a party making a contract as agent, *bonâ fide* but erroneously believes that such authority is vested in him, he is personally liable.—S. C. C. 94.

4. It is in accordance with the custom of the country to recognize the use in bonds of gomashtas' or agents' names, instead of the names of their principals.—1 Hay 24 (Marshall 3).

5. In a suit to recover money paid to the defendant who had undertaken to carry on a law-suit as an — for the plaintiff but never fulfilled his part of the contract, it was held that the money was not advanced solely and wholly in order to furnish the defendant with funds to meet the expenses of the law-suit; and that as the defendant had taken delivery from the Government for the plaintiff of property consisting of cash and jewels amounting to five lakhs of rupees which he remitted to her (the plaintiff) during the perilous time of the Mutiny, the plaintiff was entitled to a decree for only so much of the money sued for as remained after allowing the defendant a set-off of 1 per cent. on the gross value of the property taken delivery of by him.—1 Hay 411.

6. A suit for rent, under Act X of 1859, may be instituted by a gomashta in the name and on behalf of his employer without his being expressly empowered by a special power of attorney.—2 Hay 426 (Marshall 384). *See* 10 W. R. F. B. 39, 11 W. R. 43, 16 W. R. 254.

7. Although a general agent may not have power to borrow money for his principal, yet the authority to borrow in a particular case may be shown by a previous authority, either express or implied, or by subsequent ratification.—2 Hay 644 (Marshall 544).

8. A Rajah instituted a suit under Act X of 1859 through an agent appointed in that behalf. The Deputy Collector cited the Rajah himself to appear and be examined. He excused himself on the ground of privilege under s. 22 Act VIII of 1859 and petitioned that the evidence of his general agent might be taken. The Deputy Collector, without examining the general agent, dismissed the suit on the ground that the suit ought to have been instituted by the general agent, and that the Rajah himself was bound to obey his citation. *Held* that the Deputy Collector was bound to receive the evidence of the general agent, and to decide the case upon the evidence which was tendered; and that the refusal of the Rajah who had the privilege which he claimed, and his appointment of a special agent or mookhtar for the purposes of his suit instead of the general agent, were no ground for dismissing the suit.—Marshall 627.

9. An admission of an agent is not equivalent to an agreement for rent justifying a claim for 11 years' arrears of rent.—1 R. J. P. J. 160.

10. If a principal suspends an agent, the agency must be held to have been determined, within the meaning of s. 33 Act X of 1859, from the time of the suspension.—W. R. Sp. (Act X) 8 (2 R. J. P. J. 21); 5 W. R. (Act X) 91; 6 W. R. (Act X) 27.

11. A and B appeared to bid for certain *putnees* offered for sale by competition, but agreed, instead of bidding against each other, to take certain properties jointly. The properties were accordingly taken by C who executed a written agreement to convey one-fourth share of the *putnees* to A, but subsequently went and paid the purchase-money and had the *putnees* registered in the name of D, repudiating his agreement with A. A sued C and D for specific performance of C's agreement. *Held* that A's abstaining from competition of the *putnees* under verbal agreement with B was a sufficient consideration for his written agreement with C for the conveyance of the one-fourth share to A. D pleaded that he was the real purchaser, and that B was his agent for whom he was not liable. *Held* that, as D accepted and benefited by the act of his agent B, he was bound by B's stipulation, particularly as, in B's dealings with A, B's agency was not disclosed to A, but B acted as himself the purchaser.—Sev. 9.

12. Plaintiff having sued the ex-King of Oude, and him alone, as the principal for contracts made by an alleged authorized agent, was bound to adduce most full and satisfactory proof in support of his allegation of authorized agency by implication.—Sev. 507.

13. Extent of authority of agent.—1 Hyde 217, 2 Hyde 25, 153.

14. Effect of the insolvency of an agent upon contracts made by him with third parties on behalf of an undisclosed principal.—2 Hyde 281.

15. If the principal adopts the acts of an agent in the purchase of a property, he must take the property subject to the conditions with which the agent encumbered it, notwithstanding any secret arrangement between them not known to third parties.—W. R. Sp. 3.

16. An agent's assent to be bound by the statement of a particular witness is not an assent to arbitration, but within his general authority to carry on his principal's suits.—W. R. Sp. 142.

16*a*. A tehseeldar, suing for the rent of the mehal of which he makes collections, must be presumed to be an agent with personal knowledge authorized by s. 85 Act X to present a statement of claim.—W. R. Sp. (Act X) 28.

17. Where plaintiff's agent is unable to give sufficient evidence, the Court should, under s. 64 Act X of 1859, require the attendance of the principal, and not dismiss the suit with reference to s. 35, which has nothing to do with a case after it has proceeded to hearing.—W. R. Sp. (Act X) 51 (2 R. J. P. J. 214).

18. If a man sued an agent, with direct authority and positive directions to bid at an auction and to purchase an

Principal and Agent (*continued*).

estate, and the agent accordingly goes to the auction and bids for the estate which is knocked down to him, but collaterally and in a bye manner enters into a distinct and separate contract with an individual that, in consequence of something to be done or to be forborne, he will pledge his principal to pay to that individual a certain sum, the principal cannot be bound by this bye-transaction on the part of the agent.—(P.C.) 6 W. R., P. C., 57 (P. C. R. 649).

19. Liability of agent where he mixes up his private transactions with those of his principal by borrowing for both.—2 W. R. 156.

20. A mere admission of an agency to sell will not necessarily raise a presumption of an authority to buy on credit, or otherwise to pledge the credit of the principal.—2 W. R. 231.

21. A principal can determine at his mere pleasure the authority given to an agent.—3 W. R. 41.

22. It is not within the reasonable scope of the authority of an assistant in an indigo factory to purchase any amount of indigo seed for his master, and to make his master liable, particularly where the seed was not purchased or used for the factory; and though the assistant, in writing to the vendor for the seed, styled himself in the body of the letter as the manager of the concern, yet his signing himself for another person, and not for the owner of the factory, disclosed to the vendor that the other person and not the owner of the factory was his principal.—3 W. R. 123.

23. Nature of proof necessary to establish a *primâ facie* case of constructive purchase by agent out of the funds of the principal.—3 W. R. 232.

24. An agent employed in collecting rent cannot question the title of his principal to receive the rent, but must pay him all that he collects.—3 W. R. (Act X) 3.

25. The fact of an agent being employed cannot affect the right of the principal to receive money due to him.—4 W. R. 86.

26. Where defendant (a servant of Government) gave orders for bricks, and plaintiff was aware that defendant was a servant of Government and that the bricks were required for building bridges on account of Government, the Government, and not defendant personally, was held liable.—4 W. R., S. C. C., 13.

27. An agent who deals with another man's goods as if they belonged to his principal, may be answerable to the true owner, notwithstanding that he acts by the command or direction of his principal.—4 W. R., R. C., 1.

28. An agent of one co-sharer is not liable to other co-sharers for money drawn by him under a power from his principal and not as trustee for the others.—5 W. R. 172.

29. S. 24 Act X does not apply to suits against agents involving pure questions of title, *e.g.* where plaintiff never received rent or was acknowledged by defendant as entitled to it, and defendant never was employed by him or acted as his agent.—5 W. R. (Act X) 15, 36.

30. Plaintiff need not be summoned under s. 64 Act X where defendant does not allege plaintiff's knowledge as to certain deductions claimed by defendant and plaintiff admits the class and description of the deductions; but the *onus* is on defendant to prove the amount.—5 W. R. (Act X) 64.

31. Statements fraudulently made by an agent for his own benefit are not binding on the principal.—6 W. R. 252.

32. A man's agent for the purchase of an estate is not necessarily his agent to re-convey; nor would the very common incident of one member of a joint Hindoo family, suing on behalf of the family, constitute him their agent so that a sale by him would bind the others.—7 W. R. 335.

33. Obligation of an agent under s. 24 Act X to render an account for moneys received, and how such account may be rendered.—7 W. R. 452. *See also* 9 W. R. 250, 18 W. R. 339.

34. Notice to a purchaser's agent is constructive notice to his principal, when, without it, the latter would have escaped a trust or burden relative to the subject of purchase.—8 W. R. 399.

35. An agent is not personally liable in an action brought on an *implied* contract which is no other than a *quasi* contract.—9 W. R. 206.

36. The manager of an indigo concern cannot maintain an action in his own name based on a contract to cultivate indigo not made in terms with him personally but addressed to a previous manager.—9 W. R. 254. *See* 23 W. R. 242.

37. A cause of action accruing against an agent for money received and accounts kept, falling within the class mentioned in s. 24 Act X, survives the death of the agent.—10 W. R. 59.

38. The only effect of s. 69 Act X is to enable the person who collects the rent to sue as agent for the person who has the right to recover the rent.—11 W. R. 43.

39. A tehseeldar may take advantage of s. 69 with respect to arrears of rent accruing as well before as during his time.—*Ib.*

40. Where a plaintiff, having full knowledge as to who was the principal and who were the agents, elected to sue the agents, and thereby gave up all claim as against the principal, and the agents not having objected as to their liability, and having pleaded payment,—*Held* that the sole question between the parties was whether that payment had been made or not.—11 W. R. 247.

41. The extent and nature of the powers vested in an agent are not so much a matter of law as a matter of fact to be decided in each case in which a question of agency arises.—12 W. R. 130.

42. Where there is nothing in a decree or a bond in respect of sums owed by the manager of an indigo concern on account of factory expenses to connect him with his principal (the proprietor), the decree cannot be executed against the property of the latter.—12 W. R. 208.

43. A recognized agent is not entitled, on behalf of his principal, to institute or defend a suit, under s. 16 Act VIII, in his own person and name.—13 W. R. 344.

44. The professed *gomashta* of a firm no longer existing is not a recognized agent within cl. 2 s. 17 Act VIII.—*Ib.*

45. In a suit under s. 33, where defendant denies that he is the agent of the plaintiff, the Collector is bound to try that issue; and if he finds that the relation of — existed between the parties, he has jurisdiction to determine the suit.—13 W. R. 433.

46. A suit against an agent is bad in law; it should be brought against the principal.—14 W. R. 248.

47. A suit by a zemindar against a gomashta employed by him in the collection of *Bhikya* rents comes within the purview of s. 21 Act X.—14 W. R. 351.

48. A vakeel may be a "duly authorized agent" within the meaning of s. 301 Act VIII.—15 W. R. 198.

49. An authority granted to an agent to purchase does not imply authority to sell; and the mere fact of the principal not questioning his agent's right to sell is no proof that he consents to the latter exercising such right.—15 W. R. 317.

50. In a suit by a zemindar under s. 24 Act X, where the defendant when appointed superintendent of two estates was required to make the zemindar's principal cutcherry his place of business,—*Held* that that was the place where the cause of action arose, and that the suit ought to have been instituted in the sub-division in which the principal cutcherry was situated.—15 W. R. 343.

51. In a suit for rent, the fact that a third party had been plaintiff's agent and had been receiving rent for him from defendant, was held sufficient to establish defendant's liability to pay his rent to plaintiff.—17 W. R. 14.

52. An agent on the part of Government (an officer of the Public Works Department as in this case) cannot bind the Government with a contract made by him in excess of his authority; nor can any payment made by the officer who has so exceeded his authority in making the contract, make that contract binding.—17 W. R. 497.

53. Where the sole question raised in both Courts in India was whether or not certain documents purporting to be an allowance of plaintiff's accounts by the defendant's agent were signed by the agent, the Privy Council declined to allow the defendant to raise before them the question as to the authority of the agent to bind him (the defendant).—(P. C.) 18 W. R. 233.

54. An agent who has sold goods for his principal and received the price is bound to pay it over to his principal, although the contract of sale is illegal and void.—(O. J.) 18 W. R. 424.

55. Agents buying indigo seed in a rising market under an order to purchase on the most favorable terms cannot experiment by sowing a sample and waiting before they

PRINCIPAL AND AGENT (*continued*).

purchase to see whether it will germinate. They are only bound to act to the best of their judgment and to use proper care and skill, and their acts cannot be repudiated unless they are shown to have been guilty of negligence.—(P. C.) 19 W. R. 65.

56. Where an account is rendered by an agent after the period of his agency has come to an end, and a balance struck and agreed upon as due by him to the principal, such balance may constitute a cause of action against the agent.—20 W. R. 309.

57. A manager's authority to make any admission which can be binding on his employers is withdrawn when he is dismissed, whether his dismissal is or is not upon such a notice as the manager has a right to demand.—21 W. R. 405.

58. Where a man steps in during an auction-sale and assumes the character of a principal agent, and deposing another who is really acting as agent, purchases the property, he cannot afterwards be allowed, in equity, to turn round and claim to have purchased not for the principal but for himself, and to obtain a part out of his purchase.—(P. C.) 23 W. R. 358.

59. In a suit for the recovery of certain articles sold and delivered to defendant No. 1 who had given an order for payment, which defendant No. 2, as his agent, had accepted by an endorsement, plaintiff gave up the claim against defendant No. 1 and demanded the amount from defendant No. 2 alone.—*Held* that, under the circumstances, there could be no decree against defendant No. 2. -25 W. R. 91.

See Appeal 174.
Attorney and Client.
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Bill of Exchange 6.
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Lease 27, 40, 41, 60, 67, 75.
Limitation 25, 26, 202, 203, 229, 232.
,, (Act X of 1859) 3, 19, 26.
,, (Act XIV of 1859) 39, 41, 91, 92, 167, 201, 252, 318, 329.
Master and Servant 2.
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Mortgage 179, 302.
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Plaint 34.
Power of Attorney 1, 2.
Practice (Amendment) 16.
,, (Appeal) 47, 81.
,, (Attachment) 3.
,, (Parties) 8, 16.
Pre-emption 10.
Principal and Surety 21.
Promissory Note 2.
Putnee Talook 90.
Rent 88, 108.
See Resumption 4.
Revenue Agent.
Sale 194, 209.
Special Appeal 108.
Suit 6.
Summons 20.

Principal and Surety.

1. By a bond given for the faithful discharge of the office of Overseer to a Ferry Fund Committee, the surety became bound "to make good any funds entrusted to the Overseer which may be misused." *Held* that, under those words, the surety was liable for a loss of funds arising from the mere carelessness or indiscretion of the principal, independently of any dishonesty, as by his lending the money to contractors.—1 Hay 155 (Marshall 89).

2. The liability of a surety or his heir, under s. 4 Reg. II of 1806, ceases after the death of the principal.—2 Hay 115.

3. A surety of the judgment-debtor may be made liable in execution of decree, without the necessity of a separate suit.—2 Hay 673.

4. Where, on discovery of a deficit in the deposit accounts of certain zemindars, a Collector attaches the property of the sureties for the Collectorate Treasurer, the remedy open to the sureties is against the Treasurer only.—W. R. Sp. 118.

5. Where a Salt Darogah deposits security for the due performance of his duties, to be appropriated by Government in case of loss to the State from his failure to perform them, and the Government without his consent alters his position and risk, such alteration relieves him from his engagement as surety.—W. R. Sp. 137.

6. The liability of a surety will not extend beyond his undertaking, or to voluntary payments by his principal to a third party.—W. R. Sp. 284 (L. R. 66).

7. A security voluntarily signed, existing upon the record, and never taken off the file, is a valid and subsisting security. The intentions and motives of the obligor in giving it must be judged by what is mentioned in the instrument. The acceptance of the separate security of one surety is not invalidated by the acceptance of separate securities of five other sureties.—(P. C.) 5 W. R., P. C., 129 (P. C. R. 93).

8. The sureties of a Naib are absolved from liability if the principal takes bonds from the Naib in acknowledgment of the debts, giving him different periods of time for payment, without the knowledge and consent of the sureties.—1 W. R. 81. *See also* 15 W. R. 252; 16 W. R., O. J., 16; and 30 *post*.

9. A suit against a party who became a surety under s. 76 Act VIII of 1859 for the appearance of the defendant in a former suit is not affected by s. 11 Act XXIII of 1861.—3 W. R. 65.

10. S. 204 Act VIII applies to the case of parties who become sureties under s. 76 or s. 83, but not to parties who become sureties after a decree is passed.—7 W. R. 329. *See also* 13 W. R. 35, 15 W. R. 538.

11. A promise to pay a debt when made by other than the borrower is binding in many cases, although the amount of it may not be ascertained at the time.—9 W. R. 140.

12. The property of a deceased principal cannot be taken in execution of a decree against the surety.—11 W. R. 69.

13. A creditor who lends money on a joint bond or on several bonds, exercising the right which he possesses to resort to all his security till the debt is repaid, is not fettered by any arrangements between the —as to the mode in which the principal shall indemnify the surety.—11 W. R. 461.

14. Plaintiff sued the widow Ranees and the infant son of a deceased Rajah, and based his claim on a bond signed by the Ranees. The plaint alleged that the debt was the Rajah's, but the bond recited that the Rajah had borrowed moneys from the plaintiff, and it drew a distinction between the dealings and estates of the Rajah and the dealings and estates of the Ranees. *Held* that the suit against the Ranees was in the nature of a claim against sureties, and that in the absence of proof that they knew the circumstances under which the Rajah contracted the loan, it could not be maintained against the Ranees.—(P. C.) 11 W. R., P. C., 41.

Principal and Surety (*continued*).

15. Where two parties are jointly and severally liable under the terms of a bond, the principal may be sued for the amount due with interest, notwithstanding that a decree has been obtained for the same sum against the other party with leave to proceed against the principal.—12 W. R. 191.

16. Where a surety dies before a debt is paid and the lender takes a fresh acknowledgment from the borrower, this subsequent arrangement cancels the surety's liability. —12 W. R. 294.

17. The rules governing Courts in England in matters of suretyship cannot be applied to a case where joint and several liability is not found as a fact, and where the sum alleged to be due is contested.—12 W. R. 462.

18. A surety who conditioned that he would be responsible for the continued presence of an accused person at one Court, was held released from liability by the permission which that Court gave the accused, without the surety's consent, of leaving that place on business, and also by the subsequent transfer of the case to another Court.—13 W. R., Cr., 53.

19. Where the parties sued were found to be, within the knowledge of the sureties, the real contending parties, the sureties were held responsible for these parties and not for a *benameedar*.—14 W. R. 12.

20. S. 204 Act VIII does not apply to the case of a conditional decree upon which execution cannot be carried out. —14 W. R. 63.

21. Where an agent borrowed money for his principal on a bond to which plaintiff put his name, and the lender subsequently obtained a decree with interest against both agent and principal and realized the whole amount from the plaintiff,—*Held* that plaintiff's cause of action was as surety and arose when he paid the money.—14 W. R. 173, 15 W. R. 413.

22. A bond taken by the Court as security under s. 8 Act XXIII of 1861 can be enforced under s. 204 Act VIII. —15 W. R. 21.

23. Where a surety allows money placed with him as security for the purpose of indemnifying the co-sureties to be withdrawn, he loses his remedy against the co-sureties to the extent of the security.—15 W. R. 185.

24. Each surety should see that money placed in the hands of sureties for the purpose for which they have become sureties, is not misapplied.—*Ib.*

25. In the absence of an application under s. 339 Act VIII or of anything to show whether or not the surety bound himself beyond the penal sum of the bond,—*Held* that that sum only could be required from him.—15 W. R. 538.

26. The renewal of a surety-bond was not held to operate as a discharge of the old bond, in a case where, after the giving of the new bond, a discovery was made, though unknown at the time, that frauds had been committed during the time that the old bond was in existence.—(P. C.) 16 W. R., P. C., 11.

27. The acquittal of a principal in a Criminal Court on a charge of misappropriation of funds, is no bar to a civil action against the sureties.—17 W. R. 131.

28. A surety was held responsible for neglect in obtaining a duplicate of a Government promissory note upon the security of which his principal had obtained a loan and which was stolen from the lender.—18 W. R. 58.

29. A surety for a Nazir, under his obligation to the Government, to indemnify the Government for any loss that it might incur, was held not liable, except to the Government, for any wrongful acts done by him.—18 W. R. 259.

30. A creditor, by accepting from the principal debtor, without the knowledge or consent of the surety, a sum on account of interest in excess of that then due on a promissory note, impliedly gives time to the principal debtor and so discharges the surety from liability.—(O. J.) 18 W. R. 416.

31. Where a party engaged to be surety for a gomashta and to make good all defalcations proved to have been made by him, the engagement was held to refer to defalcations shown to have been made by the gomashta during the period of the gomashta's life, and not to apply to a time after the gomashta's death when all power of advising or controlling the gomashta had ceased.—20 W. R. 12.

32. When a surety has paid off the debt of his principal, not only are all the collateral securities transferred to the surety, but, by what is called subrogation, the right is also transferred to him to stand in the place of the original creditor, and to use against the principal debtor every remedy which the principal creditor himself could have used. Accordingly, the surety is not debarred from proceeding against the original debtor upon the instrument itself which created the debt by reason of the debt having been paid by himself.—21 W. R. 847.

33. The fact of a surety for the payment of the price of goods purchased signing a voucher for them, cannot make him primarily responsible.—22 W. R. 209.

34. The ground on which a Magistrate has power to refuse to accept any surety under s. 516 Act X of 1872 must be a valid and reasonable ground.—22 W. R., Cr., 37.

35. Where two parties executed a surety-bond addressed to J, R, and M, owners of certain property, binding themselves to be answerable for the good conduct and proper discharge of duties of their gomashta B, and the property was afterwards transferred to R alone,—*Held* that, when J and M ceased to have any interest in the property, there was such entire change in the nature of the service that the sureties' liability did not continue, and they were not liable to be sued upon their bond.—23 W. R. 90.

36. Where a Court, during the pendency of an enquiry under s. 8 Act XXIII of 1861, allows the defendant to be at large upon security for his appearance when called upon, if at the close of the enquiry it is found that the defendant has appeared, the liability of the surety is at an end.—24 W. R. 292.

37. A mere recommendation by one party to another to lend money to a third party, does not render the first party liable to repay the loan.—24 W. R. 415.

38. A surety must be taken to have entered into his contract only for the time during which the relation created by the instrument of suretyship continues, and with reference only to the person to whom he made himself responsible.—25 W. R. 250.

See Appeal 143.
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Principality.

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PRIORITY (*continued*).

See **Practice (Execution of Decree) 12, 15.**
Registration.
Sale 64, 160, 184.

Prisoner.

1. Where a defendant is detained in custody under ss. 75 and 78 Act VIII (*see* explanation of the circumstances under which these sections are severally applicable), and the Judge wishes to have him brought before the Court, it is not necessary to resort to the provisions of Act XV of 1869; a direction to the jailor will suffice.—13 W. R. 278.

2. Every facility should be given a — to enable him to prepare his petition of appeal.—13 W. R., Cr., 69.

3. The right which a — has to the benefit of any reasonable doubt in the Court of first instance does not apply to the Court of Appeal.—18 W. R., Cr., 15.

See **Accused.**
Fines 1.
Habeas Corpus.

Privity.

See **Limitation 44.**
Putnee Talook 10.

Privy Council.

1. A suit for the recovery of possession of land was valued at a sum less than 10,000Rs, being the value of the land; but the plaintiff claimed in the suit, in addition to the land, wasilat, which, when added to the value of the land, amounted to more than 10,000Rs. *Held* that an appeal lay to the —. 1 Hay 103 (Marshall 21).

2. Practice of — as to judgments from Courts in India as declared in a suit by a Mahajun or native banker.—(P. C.) 5 W. R., P. C., 77 (P. C. R. 13).

3. Practice of — in cases of appeal from concurrent judgments on questions of fact.—(P. C.) 5 W. R., P. C., 79, 53, 57; (P. C. R. 16, 71, 73, 229); 11 W. R., P. C., 35; 15 W. R., P. C., 1, 5, 23, 37; (P. C.) 18 W. R. 233, 285; (P. C.) 19 W. R. 1. 275; (P. C.) 23 W. R. 451; (P. C.) 26 W. R. 18.

4. According to the 21st Geo. III c. 70 s. 21, two suits (each for less than 50,000Rs., but both for more than that amount), in which separate judgments were given, cannot be consolidated for the purpose of permitting an appeal to the —, each judgment, when pronounced, having been final and conclusive.—(P. C.) 5 W. R., P. C., 31 (P. C. R. 56). *See* 18 W. R. 21.

5. Practice of — in reviewing proceedings of the Courts in India where the Hindoo and Mahomedan laws are the rule.—(P. C.) 6 W. R., P. C., 1 (P. C. R. 98).

6. Practice of — not to favor objections merely of form or to matters of practice.—(P. C.) 7 W. R., P. C., 8 (P. C. R. 164); 15 W. R., P. C., 1; 16 W. R., P. C., 22.

7. *Quære.* Whether the leave given by the Courts in India to a party to sue *in formâ pauperis*, will enable him to prosecute his appeal to the — without special leave of the —.—(P. C.) 7 W. R., P. C., 29 (P. C. R. 166).

8. Duty of — to examine the whole evidence and to form for itself an opinion upon the whole case.—(P. C.) 7 W. R., P. C., 73 (P. C. R. 216); (P. C.) 18 W. R. 183.

9. Practice of — in reversing decrees of Lower Courts on questions of fact.—(P. C.) 5 W. R., P. C., 3 (P. C. R. 319); 1 W. R., P. C., 47 (P. C. R. 513); 15 W. R., P. C., 20; 16 W. R., P. C., 5, 9, 16; 25 W. R. 1.

10. Practice of — in examining questions of improper consent to arbitration.—(P. C.) 4 W. R., P. C., 31 (P. C. R. 360).

11. Leave to appeal to — how to be regulated when the matter in dispute in the appeal amounts to 10,000Rs. including interest *up* to the decree appealed against, and when the 10,000Rs. can only be reached with the addition of interest *subsequent* to the decree.—(P. C.) 3 W. R., P. C., 14 (P. C. R. 399).

12. Restoration of appeal to — dismissed for default of prosecution upon the understanding however that the security in India was gone by dismissal of appeal.—(P. C.) 3 W. R., P. C., 8 (P. C. R. 408).

13. In determining the value of an appeal to the —, regard must be had to the Stamp Law.—(P. C.) 2 W. R., P. C., 9 (P. C. R. 458).

14. Practice of — not to reverse decrees of the Courts of India (except in very extraordinary cases) merely on the effect of evidence or the credibility of the witnesses.—(P. C.) 1 W. R., P. C., 30 (P. C. R. 460). *See also* 10 W. R., P. C., 10.

15. There is no right of Criminal Appeal to —.—(P. C.) 1 W. R., P. C., 13 (P. C. R. 481). *See also* 18 W. R. 407.

16. The — thought it objectionable to disturb or vary decrees properly made by the Zillah and Sudder Courts for the mere purpose of guarding against the possible error of some other tribunals in some future suit.—(P. C.) 2 W. R., P. C., 19 (P. C. R. 485).

17. Duty of Lower Courts to pronounce an opinion on all important points so as to obviate the necessity of a remand by the — for trial on proper issues on the merits.—(P. C.) 5 W. R., P. C., 63 (P. C. R. 631).

18. Inclusion of unnecessary documents in printed transcripts sent from India, prohibited.—*Ib.* *See also* 17 W. R. 106.

19. An order of the High Court, rejecting an application for a review of judgment, is a final order appealable to — under s. 39 of the Court's Charter; the petition of appeal being presented within 6 months from date of said order.—1 W. R, Mis., 13. (*Over-ruled by F. B.*) *See* 47 *post.*

20. Where plaintiff obtained a decree for possession of a zemindaree which was reversed on appeal by the High Court, and the plaintiff then appealed to the —, the High Court held that it had no power, under s. 4 Reg. XVI of 1797, to order security to be taken from defendant (respondent in the appeal to the —) for the due performance of such orders as the — may pass in the appeal, or to suspend the decree reversing the decision of the first Court.—2 W. R., Mis., 23. *See* 37 *post.*

21. The High Court has no power to consolidate appeals to the —, or to admit appeals to the — where the time for appealing has expired. Such consolidation and admission cannot be made without the permission of the —.—2 W. R., Mis., 26.

22. There is no law which requires a suitor to appeal from interlocutory orders under penalty of forfeiting for ever the benefit to the consideration of the Appellate Court. The — have in many cases corrected erroneous interlocutory orders on the appeal of the whole cause coming before them.—(P. C.) 3 W. R., P. C., 45 (P. C. R. 325); 5 W. R., P. C., 47 (P. C. R. 621); 11 W. R., P. C., 19.

23. The right of action to a person who is restored to possession under a decree of the — does not accrue before the decision of the —; and he is entitled to interest on mesne profits from the time of his ejectment up to one year after the decision of the —.—5 W. R. 125. *See also* 7 W. R. 173.

24. When the — remit a case directing certain enquiries by the Zillah Court, the objects and reasons of such enquiries as set forth in the judgment of the — may be communicated to the Zillah Court.—5 W. R. 271.

25. The High Court cannot under s. 4 Reg. XVI of 1797 interfere to require security from a party who has formally been put in possession of the property in dispute in execution of a decree, where execution was taken out before an appeal to the — was preferred and admitted. —5 W. R., Mis., 13. (*Ruled contra by P. C.*) 12 W. R. 296.

26. In the case of an appeal to the — the High Court has no power, on failure of both parties to furnish security as required by the same section, to attach any property held by the appellant beyond that decreed.—5 W. R., Mis., 37.

27. Security bonds for costs of appeal to the — come within Article 12 Schedule A of Act X of 1862 and ought to be executed on a stamp as therein specified.—5 W. R., Mis., 47.

28. An appeal to the — involving a question or demand respecting property of the value of more than 10,000Rs., is admissible under s. 39 of the High Court's Charter although the portion of the property to which the appeal relates is below that value.—6 W. R., Mis., 4. *But see* 19 W. R. 191.

29. The High Court cannot admit an appeal to the — when the evidence to show that the value of the property in appeal, though stated at less, was really more than

PRIVY COUNCIL (*continued*).

10,000Rs., is not tendered until after the time allowed for appeal.—6 W. R., Mis., 17. *See* 43 *post*.

30. Procedure by High Court on admission of appeal to the —.—6 W. R., Mis., 17.

31. The High Court cannot, under s. 4 Reg. XVI of 1797, in the case of an appeal to the —, suspend execution of decree of Lower Court not appealed from, or direct the taking of security.—6 W. R., Mis., 45.

32. The High Court cannot interfere in a matter where a petition of appeal to the — was returned because not accompanied with the sum certified or a sum probably sufficient to meet the expense of translating and transcribing the proceedings in the case, and the application was renewed after the time for appeal had expired.—6 W. R., Mis., 50. *See* 43 *post*.

33. Under s. 4 Reg. XVI of 1797, in the case of an appeal to the —, security to the extent of the whole sum decreed need not always be taken from the decree-holder; and when less is taken, the decree-holder should be restrained from executing the decree in excess of that amount.—6 W. R., Mis., 62.

34. In a suit in which an appeal to the — from a decree of the High Court has been admitted and is still pending, the Court of original jurisdiction which made the decree first appealed from has power to issue execution. But such Court, if it has notice of the appeal to the —, should stay its hand until the parties have had an opportunity of applying to the High Court under s. 4 Reg. XVI of 1797. (F. B.) 6 W. R., Mis., 84. *See also* 7 W. R. 225.

Even where judgment-debtor has failed to give security. —8 W. R. 275.

35. S. 338 Act VIII and s. 36 Act XXIII of 1861 do not give to the Lower Courts power to take security in the case of an appeal from a decree of the High Court to the —.—(F. B.) *Ib.*

36. An appeal to the — being once admitted, whether properly or erroneously, the High Court has no further jurisdiction to review its order and declare the appeal rejected, merely by reason of a different view of the law subsequently taken by a Full Bench.—6 W. R., Mis., 97, 120.

37. Plaintiff obtained a decree for possession which was reversed on appeal by the High Court and restitution of the property was ordered. Plaintiff having appealed to the —, applied to be allowed to remain in possession of the property upon the security which he had already given. *Held* that the High Court had no power, under s. 4 Reg. XVI of 1797, to suspend the restitution and that defendant was entitled to enforce restitution without giving security.—(F. B.) 6 W. R., Mis., 111. *But see* 16 W. R. 289.

38. The High Court has no power to re-admit an appeal to the — which has once been dismissed for default.— 6 W. R., Mis., 121; 7 W. R. 47. *See* 43 *post*.

39. *Quære*. Whether, where appellant is not residing out of the British territories in India, the High Court can demand security for costs after issue of summons, *i.e.* notice of the appeal.—6 W. R., Mis., 123.

40. In an appeal to the — the appellant should not be put to the expense of translating and transcribing papers and account-books regarding which it is impossible to say that they are material or relevant or even part of the evidence in the cause; but the respondent may translate them at his own expense.—7 W. R. 90.

41. Razeenamahs and safeenamahs, as well as security-bonds, connected with appeals to the —, need not be in English.—7 W. R. 291.

42. The High Court has no power to receive a petition of appeal to the — without the usual security-bond duly registered.—7 W. R. 338.

43. The High Court has the power and should exercise its discretion in each particular case with regard to restoring appeals to the — dismissed for default or for any reason removed from the file of the High Court, after the time for appeal has expired.—(F. B.) 7 W. R. 531.

44. An application to appeal to the — *in formâ pauperis* may be made to the High Court on unstamped paper, and accompanied by a certificate of Counsel that there is a reasonable ground of appeal, the usual security for costs being given, and the costs of translation deposited.— 8 W. R. 48.

45. After execution has once issued under a decree of the High Court subsequently appealed to the —, it is beyond the power of the Court, and not within the scope of s. 4 Reg. XVI of 1797, to set aside the execution.—(F. B.) 8 W. R. 144.

46. Under s. 39 of the High Court's Charter, an appeal lies to the — from the order of the High Court in execution proceedings, when the amount involved is above the appealable value, with reference as well to s. 11 Act XXIII of 1861 as to s. 283 Act VIII.—(F. B.) 8 W. R. 147.

47. An order made by the High Court on an application to review its judgment in a case of appeal, is not an order made on appeal within s. 39 of the Court's Charter, from which an appeal lies to the —.—(F. B.) 6 W. R., Mis., 102; 10 W. R. F. B. 1. *But see* 21 W. R. 263.

48. In cases of appeal to the — under s. 42 of the High Court's Charter, the Court should not, in transmitting the proceedings, send such proceedings as applications for review of judgment of the High Court, and the orders of the Court thereon.—(F. B.) 10 W. R. F. B. 1. *See also* 11 W. R. 115.

49. A High Court should record the grounds of its decision in a case which is appealed to the —.—(P. C.) 11 W. R., P. C., 33.

50. A party who did not, in his grounds of appeal from the judgment of the Zillah Judge, urge that the Judge had improperly rejected evidence tendered by him, was not allowed, in appeal to the —, to raise that objection.— (P. C.) *Ib.*

51. Pending a suit for damages, plaintiff applied that security might be required from the defendants under s. 81 Act VIII; and on their failure to give it, their property was attached. Plaintiff's suit was decreed in the Lower Court but dismissed on appeal by the High Court. He then appealed to the — and prayed the High Court either to continue the attachment, or to require security from the defendants pending the result of the appeal. *Held* that the Court was not competent to adopt either course.— (F. B.) 12 W. R. F. B. 16.

52. On the death of a judgment-debtor who had been permitted to retain possession of disputed property pending an appeal to the — upon furnishing security for mesne profits and costs, his widow's life-interest cannot be accepted as security instead.—12 W. R. 187.

53. Where a decree-holder obtaining a declaratory decree that certain property belonged to his debtor, sold and himself purchased it, and an objector on appeal to the — obtaining a reversal of the declaratory decree took out execution for costs and mesne profits,—*Held* that the opposite party could appeal against the principle that he was liable without waiting the result of the Ameen's investigation.—12 W. R. 411.

54. The decree of the — in the above case was held not to include restitution of everything that the decree-holder would have enjoyed, had the property not been sold in execution.—*Ib.*

55. The pendency of an appeal to the — does not put the party who, subject to that appeal, is the owner of an estate, under a legal disability to bring a suit in that character against third parties.—(P.C.) 12 W. R., P. C., 6.

56. An objection to an appeal, on the ground that the amount in dispute is below the appealable amount, comes too late before the — at the hearing of the appeal. The costs of the suit should not be taken into consideration in estimating the amount in dispute.—(P. C.) 12 W. R., P. C., 29.

57. In calculating the period of 6 months for appealing to the —, the date on which the decree was pronounced or dated should be excluded.—(P. C.) 13 W. R., P. C., 17.

58. Where the High Court orders a judgment-debtor to furnish security pending an appeal to the —, the bond need not be registered under ss. 17 and 19 Act XX of 1866 till the security has been accepted, but the Judge should direct an investigation into the goodness and sufficiency of the property tendered.—13 W. R. 41.

59. S. 30 of the Charter of the late Supreme Court is still directory on the High Court with regard to appeals to the —.—14 W. R., O. J., 34.

60. Until a petition of appeal to the — presented to the High Court is admitted and allowed, a party has no right of appeal to the —. If the petition is allowed to remain on the files of the High Court and is not prosecuted within a reasonable time, the Court has power to order its removal from the files.—*Ib.* *See* 15 W. R. 255.

PRIVY COUNCIL (*continued*).

61. Where defendant, having the means of proving the real value of the property in dispute, makes no objection to plaintiff's undervaluation, and in special appeal herself undervalues it, that is a fraud on the Government and she cannot be heard to represent the real value for the purpose of securing an appeal to the —.—14 W. R. 62. *But see* 18 W. R. 494, 19 W. R. 191.

62. Documents intended to satisfy a Zillah Judge concerning the title of parties offering immoveable property as security in an appeal to the — should not be transmitted to the High Court, but only particulars concerning them.—14 W. R. 94.

63. A decree of the first Court reversed by the High Court and restored by the — is re-affirmed in its integrity, and the defendants generally are entitled to execute it though only one appealed to the —, s. 337 Act VIII notwithstanding.—14 W. R. 280.

64. An appeal from an order under Act XL of 1858 appointing a person to be guardian of a minor and manager of his property, bears no value and cannot be carried to the —.—14 W. R. 299.

65. When an appeal is preferred to the — from a decree of the High Court, the security to be taken from the decree-holder must be regulated by s. 4 Reg. XVI of 1797; the practice being to calculate for an amount sufficient to meet the mesne profits which are to go to his hands from the date of his obtaining possession to the probable date of the eventual execution of the decree of the —, which period is generally taken to be 3 years.—14 W. R. 361.

66. Security is taken from a decree-holder under s. 4 Reg. XVI of 1797 to indemnify the appellant to the — against loss owing to execution during pendency of appeal. If the decree is not executed, the terms of the security-bond fall to the ground, and the security is not liable for costs or anything else awarded by the —.—14 W. R. 410.

67. The guardian of an infant who filed an appeal to the — has no right to insist that the appeal should go on, when the infant, on coming of age, applies to withdraw from the appeal. If the guardian has incurred costs, he may have a claim to be recouped from the estate (if any) of the infant. —(P. C.) 15 W. R., P. C., 19.

68. Under s. 39 of the High Court's Charter, there is no right of appeal to the — from a decree made by the High Court in the exercise of original jurisdiction, if an appeal will lie to the High Court itself under s. 15; but there is a right of appeal from a decree made in the exercise of appellate jurisdiction, whether an appeal will lie or not to the High Court under s. 15.—16 W. R. 191. *See* 14 W. R. 298.

69. The — will not interfere with the finding of an Indian Court upon a question of boundary, except there has been a plain miscarriage in the conduct or decision of the case constituting a tangible ground for interference.—(P. C.) 17 W. R. 285.

70. Only the High Court, and not a District Judge, has jurisdiction to release a surety from security taken from him by the High Court to enable a decree-holder to take out execution of his decree pending an appeal to the —.—17 W. R. 464.

71. No appeal will lie from such an order of release by the Judge, although it is an improper one.—*Ib.*

72. A decree-holder (respondent in an appeal to the —) was required immediately to elect between furnishing security and drawing the sum deposited by the appellant on account of mesne profits and costs, and (upon failure to do so) allowing the appellant to obtain a refund of the deposit upon giving the like security.—17 W. R. 521.

73. In ascertaining whether or not there ought to be an appeal to the —, the High Court has only to look at the value of the question at issue in the litigation.—18 W. R. 21.

74. Where the — reversed a decision of the High Court (in a case which turned upon the validity of a bond) as based upon the assumed probabilities of the case instead of the evidence before them.—(P. C.) 18 W. R. 120.

75. A party desirous of executing a judgment or order of the — ought to apply to the Court from which the appeal was brought, and such Court ought to give directions to the Court by which the suit was originally tried.—(P. C.) 18 W. R. 175. *See also* 22 W. R. 102.

76. A declaration of Her Majesty in Council amounts to a direction to the Court below to clothe it in the form of a mandatory order and to give effect to such order.—(P. C.) *Ib.*

77. Where the — reversed a decree of the High Court with £276 as costs in England, and affirmed the decree of the Zillah Court with costs in the Courts below,—*Held* (1) that the "Courts below" included the High Court, and that "costs in the Courts below" included the cost of translation and printing incurred in the High Court; (2) that the decree of the Zillah Court having given interest on the costs incurred, the decree-holder was entitled to interest on the costs incurred on account of translation and printing; and (3) that the decree of the — had made no provision for interest on the £276.—18 W. R. 253.

As to last point, *see also* 21 W. R. 147.

78. The — will only under very special circumstances grant an appellant from a judgment of the High Court passed in special appeal, *nunc pro tunc*, special leave to appeal from the decrees of the inferior Courts in India, on the facts.—(P. C.) 18 W. R. 299.

79. Where an application was made for a review of judgment and notice was issued to the opposite party who came in thereupon and judgment was then delivered at considerable length, in which the Judge delivering it said that no sufficient reason had been made out for the admission of a review and that he dismissed the appeal,—*Held* that the last judgment was a rehearing, dismissing as it did not only the application for the admission of the review but the case itself on the merits, and that from such judgment the application for leave to appeal to the — should be made.—18 W. R. 494.

80. Where in a suit the stamp originally paid was on an amount very much less than 10,000Rs., and the whole course of the litigation and the stamps had reference to that valuation though the property was really of the value of 10,000Rs., the Court refused an application for leave to appeal to the —.—*Ib.*

81. Decrees affirmed by an order of the — must be executed with the execution of that order, and not as separate decrees.—19 W. R. 301.

82. Where a right of appeal to the — was lost by the petitioner depositing a less sum than that stated in the estimate of costs.—19 W. R. 305.

83. The objection that the Principal Sudder Ameen acted irregularly in delegating the decision of the main point in the case to an Ameen, not having been taken before the High Court, was not allowed to be urged before the —.—(P. C.) 20 W. R. 44.

84. A Court of first instance is bound to execute a decree of the — sent down by the High Court in the same way as if it was an express decree of the High Court.—20 W. R. 419.

85. A mere copy of the printed judgment of the — is not to be received and acted on as if it were a decree to be executed.—20 W. R. 444.

86. Orders made by the High Court under 24 and 25 Vic. c. 104 s. 15 are subject to an appeal to the —.—21 W. R. 263.

87. Where an appeal has been filed under s. 15 of the High Court's Charter against the grant of a certificate to an applicant for permission to appeal to the —, there is no ground for the contention by the applicant that the six weeks prescribed in s. 11 Act VI of 1874 will not begin to run till such appeal is finally disposed of, and the High Court has no jurisdiction to enlarge the time so prescribed. —23 W. R. 220.

88. Parties appealing to the — upon the merits ought not to take the general decree which the High Court may have given, without asking the High Court to condescend upon the details of it, if they mean to object that the general judgment is not sufficient to found the proper execution.—(P. C.) 26 W. R. 48.

89. A suit for possession and redemption, in which a third party intervened upon the claim that plaintiff had conveyed to him one-half of the property in dispute, was dismissed. On appeal by plaintiff, in which the intervenor did not appear, the Lower Appellate Court merely reversed the decree of the first Court, and the High Court affirmed the decree of the Lower Appellate Court. The — in remanding the case to the High Court to award their decree in conformity with their judgment, by declaring affirma-

PRIVY COUNCIL (*continued*).

tively what plaintiff was entitled to recover, observed that the question ought to have been raised in the High Court. —(P. C.) *Ib.*

90. No appeal lies from an order or certificate of a single Judge of the High Court admitting an appeal to the — under Act VI of 1874.—25 W. R. 529.

See Acquiescence 2.
Advocate 1.
Auction-Purchaser (Execution Sale) 6.
Churs 55, 56.
Costs 26, 27, 28, 29, 75, 79, 85, 91.
Damages 30, 99.
Declaratory Decree 30.
Gift 20.
High Court 11, 70*a*, 86, 87, 105, 173, 174.
Hindoo Law (Adoption) 58.
,, ,, (Coparcenary) 66.
Indigo 4.
Interest 29, 32, 33, 58, 81, 91, 92, 97, 105.
Judgment 24.
Jurisdiction 79, 283, 436.
Landlord and Tenant 48.
Limitation 197, 219.
,, (Act XIV of 1859) 86, 134, 137, 309.
Maintenance 19.
Mesne Profits 82, 105*a*, 112.
Mortgage 231.
New Trial 4.
Practice (Appeal) 16.
,, (Attachment) 67.
,, (Execution of Decree) 14, 45, 57, 176, 179, 207.
Rules of Practice 18, 45.
Special Appeal 32.
Vacations 1.
Will 29.

Probate.

See Court Fees 4, 8, 24, 25.
Jurisdiction 65, 493.
Right to sue 13.
Rules of Practice 35.
Will 11, 21, 22, 28, 30, 36, 43, 52, 53, 55, 56, 58, 60, 61, 62, 63, 64, 65, 70.

Procedure Code (Civil).

See Act VIII of 1859.
,, XXIII of 1861.

Procedure Code (Criminal).

See Act XXV of 1861.
,, XVII of 1862.
,, X of 1872.

Proceedings.

See Criminal Proceedings.
Miscellaneous Proceedings.
Municipal 23.

Proclamation.

1. A — of sale is no guarantee of the correctness of its contents.—2 W. R. 9.

2. The fixity of the jumma of an ancient tenure is not affected by a different jumma being mentioned in the — of sale of the same tenure.—*Ib.*

See Absconding Offender 1, 2, 10.
Auction-Purchaser (Execution Sale) 19.
Gambling 2.
Limitation (Act XIV of 1859) 154.
Practice (Execution of Decree) 48, 85.
Sale 18, 35, 52, 53, 54, 86, 140, 180, 186, 187.
Title 15.
Witness 28, 32.

Professions and Trades Tax.

In prosecutions under Act IX of 1868, a Magistrate must proceed as laid down in Chapter XV Act XXV of 1861.—11 W. R., Cr., 56.

Profligacy.

See Hindoo Law (Inheritance and Succession) 11.

Pro Formâ Defendants.

See Costs 5, 40, 44, 74.
Joinder of Parties 8.
Practice (Appeal) 9, 55.
Res Judicata 43, 60.
Right of Appeal 9.

Pro Formâ Respondents

See Objection (under s. 348 Act VIII of 1859) 4.

Promissory Note.

1. In a written promise to pay "*when I am able,*" those words are not to be treated as mere surplusage, but as a binding part of the contract. The promisee's cause of action does not accrue until the promiser is in circumstances to pay.—1 W. R. 368.

2. If an agent sign a — without disclosing the names of his principals, the latter are not liable, and no parol evidence is admissible to establish their liability.—3 W. R. 139.

3. By Hindoo law the maker of a — may show that there was no consideration for it, and that on a note for 1,200Rs. "for value received in cash" no larger sum than that actually received (700Rs.) can be recovered.—12 W. R., O. J., 9.

4. In a suit under Act V of 1866 on a —, part of the consideration for which was legal and part illegal, it was held that plaintiff could not sue on the —, but that he might amend his plaint and recover so much of the consideration as was not illegal.—(O. J.) 18 W. R. 424.

5. Where a — written in Calcutta for money due under a contract for the sale of land made in Dacca, was not met, and plaintiff sued on the original cause of action in the Court of the Moonsiff of Dacca,—*Held* that the Moonsiff was warranted in trying the suit on the original cause of action, and that in that view he had jurisdiction.—20 W. R. 6.

6. Notice of dishonour of a — within a reasonable time is necessary to make the endorser responsible to the endorsee.—21 W. R. 62.

See Bill of Exchange.
Debtor and Creditor 6.
Equitable Mortgage 1.
Instalments 23.
Interest 26.
Lien 6.
Limitation 205.
,, (Act XIV of 1859) 267.
Principal and Surety 30.
Receipt 4.
Recorders 3.

PROMISSORY NOTE (*continued*).

See Registration 91.
Res Judicata 83.
Securities (Government).
Stamp Duty 45, 58, 75, 79, 87.

Property.

See Ancestral Property.
Forfeiture 1.
Immoveable Property.
Moveable Property.
Personal Property.
Practice (Attachment) 2.
Rent 80.
Right of Property.
Self-acquired Property.
Separate Property.

Proportion.

See Auction-Purchaser (Execution Sale) 82.
Boundary 11.
Costs 2, 9, 13, 14, 33, 47, 55, 57.
Enhancement 5, 13, 67,105, 142, 150, 157, 199.
Kubooleut 35.
Misjoinder 7.
Partition 7*e*.
Rent 93.
Stamp Duty 52.

Prosecutor.

1. A Magistrate should not regard himself as a —.—13 W. R., Cr., 1.

2. A private — cannot move a Court of Sessions under s. 419 Act XXV of 1861 in a case not before that Court, though he may do so under s. 435 in cases in which the Court of Sessions can interfere.—14 W. R., Cr., 51.

3. A private — has no right to be heard before the High Court in a case in which he could not be heard in the Sessions Court.—*Ib.*

4. There is no rule that a convicted person cannot institute criminal proceedings.—21 W. R., Cr., 13.

See Pleader 32.
Practice (Criminal Trials) 1*a*, 8, 12, 30, 34, 36, 42, 56, 57, 60, 62.
Stamp Duty 86.
Summary Trial 10.

Prostitution.

What constitutes the offence of selling a minor for purposes of — under ss. 372 and 373 Penal Code.—14 W. R., Cr., 39.

See Contagious Diseases.
Nuisance 21.
Public Policy 3.

Public Policy.

1. A contract expressly declared to be made out of ill feeling to assist another in carrying on litigation against a third party is a contract against —, and a suit cannot lie upon it.—10 W. R. 140.

2. Where, to suppress a criminal prosecution for having accidentally caused the death of his wife, plaintiff voluntarily paid money to defendant who was the nearest relative of the deceased, the contract was held to be void as against morality and —, and plaintiff not entitled to sue for refund of the money so paid.—17 W. R. 84.

So also to recover money paid for the release of plaintiff's husband from custody.—18 W. R. 450.

So also to recover money paid to a Civil Court Ameen to induce him to make a favorable report.—20 W. R. 235.

3. The rent of lodgings knowingly let to a prostitute who carries on her vocation there, cannot be sued for, as being a contract opposed to morality and —.—18 W. R. 445.

4. An agreement between members of different *somajes* to have social intercourse with each other, and to intermarry, is not opposed to —, but rather in accordance therewith.—22 W. R. 517.

5. Where a Hindoo, contracting a second marriage, agreed to confer, on the party whose sister was to be his second wife, a talook which was to be carved out of his estate, and until it was carved out to make a yearly payment of a fixed sum,—*Held* that the undertaking was for ample consideration and was not opposed to —.—25 W. R. 32.

See Attorney and Client 16.
Champerty 6, 14, 15.
Excise 5.
Hindoo Law (Adoption) 72.
Maintenance 29.
Post Nuptial Contract 2.
Recorders 10.
Specific Performance 6.

Public Servant.

1. A convict warder is a — under s. 223 Penal Code.—7 W. R., Cr., 99.

2. A head constable is a — within the meaning of s. 182 Penal Code.—11 W. R., Cr., 22; 19 W. R., Cr., 33.

3. A conviction under s. 218 Penal Code was quashed, because the intention with which the prisoner was charged, viz. to cause loss or injury to the Sub-Inspector, was held to be too remote to fall within the section.—19 W. R., Cr., 40.

4. A Registry Mohurrir appointed under Act IX of 1862 (B. C.) is a —.—20 W. R., Cr., 49.

See Abetment 13.
Contempt of Court 11.
,, ,, Lawful Authority of Public Servant.
Illegal Gratification 2, 5.
Information 3.

Public Works Department.

See Principal and Agent 52.
Stamp Duty 53.

Pubna.

See Jurisdiction 380.

Punchayet.

1. An agreement between the parties to abide by the determination of a — fixing the line of a boundary, and the determination of the —, were held not to be conclusive evidence so as to bar either party from showing the determination of the — to be inequitable.—(P. C.) 7 W. R., P. C., 8 (P. C. R. 164).

2. A — was considered more competent than any Court of justice to try satisfactorily a case involving questions as to the *status* of a Hindoo family, and whether certain acquisitions were part of the estate of the late head of the family or the separate property of the individual member in whose name they stood and by whom they were ostensibly made.—(P. C.) 18 W. R. 69.

See Survey 10.

Pundits.

Opinions of — ought not to be taken, merely on their own authority, to be correct expositions of the law.—(P. C.) 2 W. R., P. C., 51 (P. C. R. 476). *See also* 10 W. R., P. C., 17.

Punishment.

1. Rule as to the amount of — on different counts as to the same offence.—1 R. J. P. J. 59.

2. A Sessions Judge, on appeal, after hearing further evidence, may enhance —. Such order is appealable under s. 408 Act XXV of 1861.—2 R. J. P. J. 161.

3. — for women committing offences under the influence of the male head of their family.—3 W. R., Cr., 12.

4. S. 75 Penal Code only applies to convictions of offences committed after the Code came into operation.—4 W. R., Cr., 9.

5. Under s. 419 Act XXV of 1861 a Sessions Judge on appeal has no authority to enhance —.—4 W. R., Cr., 20.

Not even by commuting an illegal sentence of whipping into a sentence of additional rigorous imprisonment. — 15 W. R., Cr., 7.

6. S. 75 Penal Code only applies to previous convictions for the same offence or for an offence under the same Chapter.—5 W. R., Cr., 66.

7. To warrant a sentence awarding additional — under s. 75 Penal Code as on a second conviction, the evidence that there was a previous conviction against the accused under the Penal Code must be clear and precise.—14 W. R., Cr., 7.

So also as to whipping as an additional —.—15 W. R., Cr., 52.

8. In a case of several offences under one section of the Penal Code, the proper way is to try the accused under separate charges for each of the several distinct offences under the section which have been clearly proved against them, and to pass a separate sentence on each conviction, with a direction (under s. 317 Act X of 1872) that each should take effect on the expiry of the next prior sentence. —20 W. R., Cr., 70.

9. The fact of previous convictions should under s. 469 Act X of 1872 be stated in the charge when it is intended to prove them for the purpose of enhancing —.—21 W. R., Cr., 40. *See also* 22 W. R., Cr., 39.

See Construction 132.
Culpable Homicide (not amounting to Murder) 8.
Escape 1.
False Evidence 24, 25.
Fine.
High Court, 13, 25, 32*a*, 46, 119, 144, 145, 152, 162.
Imprisonment.
Kidnapping 9.
Murder 11, 25.
Rape 4, 6.
Summary Trial 4.
Transportation.
Whipping.

Purchase-money.

1. An auction-purchaser at a sale in execution of a decree eventually set aside on appeal, cannot recover the — from representatives of the judgment-debtor.— 1 Hay 488 (Marshall 183).

1*a*. A *bonâ fide* purchaser for fair consideration from a guardian or manager is not bound to show that the — has been applied to the purpose for which it was required.—2 Hay 549.

2. A *bonâ fide* purchaser is entitled to a refund of his —, where, a dispute having arisen, it is decided by arbitrators that the vendor had no authority to sell, the principle *caveat emptor* not applying to such a case.—3 W. R. 28.

3. In a suit for possession, under a bill of sale, the plea that part of the — remains unpaid is not invalidated by the fact that a decree for the balance has already been passed in another suit.—8 W. R. 218.

4. Where a tenure is sold for arrears of rent, and a certificate of sale is granted, by the Collector, it must be presumed that all the ordinary proceedings relating to the payment of the — have been fulfilled.—12 W. R. 508.

5. Where a bond pledged certain property as security after a decree had been given to plaintiff on a prior mortgage-bond and the property had been ordered to be sold,—*Held* that neither the subsequent bond, nor a subsequent conveyance by the judgment-debtors, could create a new ownership in third parties; that the proceedings of the Moonsiff had had the effect of bringing about an abortive and inoperative sale; and that plaintiff was entitled to a refund of his —.—19 W. R. 289.

See Ancestral Property 14.
Appeal 134.
Auction-Purchaser (Execution Sale) 20, 24.
Benamee 1, 16, 17, 22, 36.
Conveyance 12.
Damages 97.
Deed of Sale 6, 9.
Endowment 39*a*.
Evidence (Oral) 23, 28.
Fraud 6.
Hindoo Law (Alienation) 3.
„ „ (Coparcenary) 21, 68.
„ Widow 23, 35.
Husband and Wife 21.
Interest 73, 114.
Jurisdiction 286.
Limitation (Act XIV of 1859) 234.
Minor 27.
Money-Decree 19, 20.
Mortgage 262.
Onus Probandi 148, 164, 215, 235.
Partnership 29.
Payment 6, 9.
Pre-emption 18, 19, 25, 43, 70.
Putnee Talook 59, 80, 91.
Registration 73, 98, 107.
Re-sale 1, 2, 3, 6.
Sale 16, 22, 30, 31, 75, 101, 124, 132, 157*a*, 189, 220, 222.
„ Law (Act XI of 1859) 19.
Sheriff 5.
Specific Performance 9.
Vendor and Purchaser 4, 5, 8, 9, 12, 17, 19, 47, 50, 55, 59, 63, 65, 66, 67, 68, 75, 76.

Purchaser.

See Vendor and Purchaser.

Purdah-women.

1. A suit against — was held to have failed, as there was no proof that the deed upon which the suit was brought had been signed by them or by any person authorized by them.—(P. C.) 17 W. R. 393.

2. In cases of transactions by —, mere registration goes far to corroborate the proof of their validity, unless a mutation of names takes place which, if done under a mookhtarnamah, has not the same effect against a purdah-woman as against a person capable of acting for himself.—(P. C.) 17 W. R. 523.

3. Where a conveyance by a purdah-woman is impeached, there ought to be clear evidence, not of the mere signature by the party, but that the secluded woman had the means of knowing what she was about.—(P. C.) *Ib.* *See also* (P. C.) 21 W. R. 340.

4. The examination by commission of — is not necessary where they can be examined in Court in a *palkee* or otherwise on a proper identification.—18 W. R. 230.

5. In cases of transactions with —, undue influence will be presumed to have been exerted over them unless the contrary be shown, and it is always incumbent on the person who is interested in upholding a transaction to show that its terms are fair and equitable.—22 W. R. 443.

6. Where the complainants were — and the Deputy Magistrate went to their residence and took their deposi-

PURDAH-WOMEN (*continued*).

tions in the presence of the accused who had no opportunity of cross-examining them inasmuch as they were in a shut-up room,—*Held* that the Deputy Magistrate's procedure was unusual and uncalled for, that the accused was prejudiced by the way in which the examination was taken, and that the complainants should have been called upon to make their charge through some one who knew the facts.—24 W. R., Cr., 22.

See **Arrest 3, 5, 7.**
Certificate 102.
Construction 59.
Endowment 77.
Gift 50.
Personal Appearance 1.
Practice (Attachment) 47.
Registration 117.

Purneah.

See **Pre-emption 4.**

Purohit.

See Hindoo Law (Religious Ceremonies) 1, 6, 15.

Purohitam.

See Hindoo Law (Religious Ceremonies) 3.

Putnee Talook.

1. Effect of leases by putneedars afterwards defaulting under cl. 2 s. 11 Reg. VIII of 1819.—W. R. F. B. 10 (1 Hay 75, Marshall 43). *See* 5 W. R. (Act X) 63.

2. A defaulter cannot, under Reg. VIII of 1819, purchase a — sold on account of his default to pay the putnee rent, either in his own name or in that of any other person.—W. R. F. B. 92 (2 Hay 356), 1 Hay 397.

3. A putneedar who sued his lakherajdar for possession of certain lands and was no party to a resumption-suit subsequently brought by the Government against the lakherajdar, was held not bound by any order for resumption passed in the latter suit.—1 Hay 49 (Marshall 19).

4. A putneedar is presumably entitled to exercise all the rights of ownership with respect to the land, which the zemindar himself might, but for the putnee, have exercised.—1 Hay 65 (Marshall 28).

5. Grant of — by Hindoo widow.—1 Hay 339 (Marshall 113). *See* 11 W. R. 554.

6. Where plaintiff, to save a — from sale for an arrear of rent of a former year adjudged, by an apparently valid decree of the Collector, to be due by defendant, paid the money without giving notice to defendant,—*Held* that the payment was made under such circumstances as entitled plaintiff to recover from defendant.—1 Hay 309.

7. Plaintiff purchased a — at a sale held under Reg. VIII of 1819, and having failed to put in proper security, was not admitted to possession for more than 10 years, during which period he sued the zemindar in the Civil Court for possession with wasilat, but his suit was dismissed on the ground of his not having fulfilled the requirements of the law. He subsequently obtained possession through proceedings held in the Collector's Court, and now sued the zemindar for an account of the profits during her (the zemindar's) khas possession. *Held* that plaintiff was entitled to an account, and that the adverse decision in the suit for possession with wasilat was in the nature of a non-suit and did not amount to an estoppel.—1 Hay 384.

9. By cl. 3 s. 17 Reg. VIII of 1819, arrears of rent for a — being personal debts, a person who was no party to an original decree for arrears of rent on account of a — cannot be liable under it.—1 Hay 474.

10. Plaintiff, alleging that he had taken dur-jotes of certain parcels of land from several ryots within defendant's putnee, and that, while he was in occupation, defendant had come and forcibly cut and carried away the crops grown by him thereon, brought his action against the putneedar for damages and for possession of the lands. *Held* that there was no privity between the plaintiff and the putneedar; and that the plaintiff had no legal *status*, as under-tenant of an ordinary ryot admittedly holding the land in dispute, to sustain an action for possession of the land against the superior landlord; nor could he, claiming to hold under ryots where tenancy of the particular land is disputed, maintain an action for damages against the putneedar as a wrongdoer in having cut and carried away his crops.—1 Hay 480.

11. Where a — is sold under a decree against the tenant, he is not liable for any rent which may accrue afterwards, notwithstanding the transfer may not be registered.—1 Hay 563 (Marshall 212).

12. A putneedar is not bound to recognise any purchaser by private sale as his dur-putneedar until he registers his name in the zemindar's sherista; and any proceeding held against the old dur-putneedar for the recovery of arrears of rent, without making the purchaser a party to it, is perfectly legal.—2 Hay 14. *See* (P. C.) 20 W. R. 380.

13. A dur-putnee lease, granted upon the payment of a bonus, contained a condition that, if the annual rent remained for a longer period than one month in arrear, the lessor should have a right of re-entry. The lessor, upon default in payment of rent, without availing himself of the forfeiture, instituted a summary suit for the arrears of rent; and upon an award therein, the lands were sold for such arrears. *Held* that the purchaser, who bought the — without notice of the condition for forfeiture, was not subject to that condition.—2 Hay 21 (Marshall 252).

14. Putneedars cannot, without covenanting for the same in their agreement, claim a remission of rent on the ground of their zemindar's having obtained a remission of revenue.—2 Hay 145.

15. Where a suit was brought by the heirs of a deceased zemindar to set aside two putnees created by him *benamee* in the names of his daughters,—*Held* (1) that, though the fund was advanced by the father, yet the advance must be presumed to have been by way of provision for the daughters, and that the putnees were created *bonâ fide* in favor of them; (2) that, even if this were not so, the title of a *bonâ fide* purchaser for valuable consideration without notice of trust would be good as against the heirs.—2 Hay 630 (Marshall 564).

16. S. 2 Reg. VIII of 1819 empowers the incoming putneedar to rid himself of all incumbrances created by the defaulting proprietor only.—1 R. J. P. J. 109.

17. A putneedar who pays in the Government revenue due on his estate, will be entitled to carry it to his rent account, where the zemindar, though he has actually paid it, has allowed it to be carried to a wrong head of account.—W. R. Sp. (Act X) 10 (2 R. J. P. J. 77).

18. Where a — was obtained by fraud, it was held defeasible by an auction-purchaser, although duly registered.—W. R. Sp. 66 (2 R. J. P. J. 78).

19. A suit for abatement of rent by a putneedar is not cognizable in a Revenue Court under s. 18 Act X of 1859.—2 R. J. P. J. 153, 8 W. R. 504. *See* 44 *post*.

20. A dur-putneedar is entitled to damages only if the — is put up to sale by the zemindar owing to the sole neglect or default of the putneedar in not paying his rent, but not where the forfeiture is incurred by reason of failure of the dur-putneedar to perform his contract and pay his own rent.—Sev. 84. *See also* 5 W. R. 201.

21. A — created subsequently to the passing of Reg. VIII of 1819, is liable to sale, even though an express condition to that effect may not have been inserted in the kubooleut.—Sev. 173.

22. The property in suit was formerly granted in lease, and there were outstanding balances in the Mofussil due to the lessee, the right to collect which the putneedar purchased. *Held* that the suit was cognizable by the Revenue Court under Act X of 1859.—Sev. 478.

24. A putneedar having once before sued the ryot under s. 28 Act X of 1859 and been cast on the ground that he could not prove payment of rent, cannot now bring a suit for the same thing in the Civil Court.—3 R. J. P. J. 29.

25. A putneedar cannot sue for abatement of rent in a Revenue Court under Act X of 1859.—3 R. J. P. J. 71. *See* 44 *post*.

26. According to Reg. VIII of 1819, the sale of a — for

PUTNEE TALOOK (*continued*).

arrears of rent must take place on a day in the Bengalee month of Jeyt.—W. R. Sp. 4.

27. Where a sale which was advertised to take place on the 5th Jeyt 1269, a date erroneously stated in the sale notice to correspond with the 17th May 1862 (Saturday), took place on the latter day (being really the 4th Jeyt), the sale was held to be illegal.—*Ib.*

28. Cl. 1 s. 14 Reg. VIII of 1819 contemplates the sale of a — being stayed, not by *any* person depositing the amount due, but by a party having a *recognized* interest in the —. According to s. 6, mere application for registration is not sufficient.—W. R. Sp. 53.

29. The purchaser of a surety's rights and interests in a — buys them subject to the zemindar's claims for arrears of rent; and if to save the — from sale for such arrears he pays up the rent, he cannot recover from the surety, but may sue the other sharers for the money paid on their account.—W. R. Sp. 73.

30. A purchaser of a — sold in execution, buys it with all its liabilities including instalments due to the zemindar, and cannot recover from the original putneedar the amount deposited by him a few days after his purchase in order to stay a sale by the zemindar under Reg. VIII of 1819.—W. R. Sp. 207.

31. A zemindar who gives his estate in putnee lease is still entitled to challenge the right of another who asserts a lakheraj title adverse to him.—W. R. Sp. 212.

32. Where consideration-money has been paid for a putnee lease with a view to khas possession, and such possession is not obtained, the proper course is to repudiate the lease and bring an action immediately.—W. R. Sp. 287 (L. R. 67).

33. If a party leases an estate in putnee reserving the right of re-entry in case of his wishing to hold it *khas*, he cannot sue to recover possession for the purpose of leasing it to a third party.—W. R. Sp. 326 (L. R. 102).

34. The expression *substantial witnesses*, as used in cl. 2 s. 8 Reg. VIII of 1819 means, men who have some stake in the community, of local influence, importance, or respectability. The words *residing in the neighbourhood* do not restrict the witnesses to residents of the village, but include those living within a short distance of the cutcherry.—W. R. Sp. 381 (L. R. 155), 2 W. R. 188.

35. A purchaser, at a sale in execution, of an estate let with others in one putnee, is not bound by any agreement between the putneedar and other zemindars, nor can he claim from the putneedar a share of rent proportioned to the Sudder jumma.—W. R. Sp. (Act X) 16 (2 R. J. P. J. 91).

36. S. 14 Act X of 1859 does not apply to the case of a — sold under Reg. VIII of 1819, unless the jumma is shown to be a mesne incumbrance subsequent to the creation of the —.—W. R. Sp. (Act X) 103.

37. A present proprietor is not bound by a former proprietor's arrangement to allow the putneedar to pay his putnee rent direct to the Collector.—W. R. Sp. (Act X) 109.

38. The holders of a talookee pottah from the zemindar are not bound to give kuboolents to the putneedar.—W. R. Sp. (Act X) 129.

39. In this case the lessor having, on the death of the lessee, granted a putnee of his whole estate including the farm in dispute, was adjudged liable to pay to the representatives of the lessee damages for the time they were deprived of the beneficial enjoyment of the farm, according to the increased rent which the new lessee had undertaken to pay.—(P. C.) 6 W. R., P. C., 48 (P. C. R. 152).

40. Examination of the evidence in a suit brought to recover a — as having been purchased *benamee* for the plaintiff's late husband.—(P. C.) 2 W. R., P. C., 1 (P. C. R. 448).

41. It being doubtful whether a manager of endowed property can grant a putnee thereof, the Court declined to enforce specific performance of a contract for the grant by a manager of a putnee lease.—1 W. R. 4. *But see* 15 W. R. 228.

42. The sale of a — dissolves the relation of landlord and tenant between the zemindar and putneedar.—1 W. R. 133.

43. A putneedar of the heir of a party to whom a share of an estate was made over by written agreement, may sue to recover that property, although that party never came into possession.—1 W. R. 210.

44. A putneedar or any other leaseholder can sue for abatement of rent under cl. 3 s. 23 Act X of 1859.—(F. B.) 1 W. R. 299 (3 R. J. P. J. 340); 2 W. R. (Act X) 47; 8 W. R. 504.

45. A putnee may be set aside as invalid and made in fraud of creditors, notwithstanding the acquiescence of subsequent mortgagees.—1 W. R. 362.

46. A putneedar cannot grant a lease of land of which he is not in possession.—2 W. R. 138. *See* 11 W. R. 80.

47. The reversal of a sale of a — at the suit of one sharer, is sufficient for the interests of the other sharers.—3 W. R. 248.

48. A holder under a dur-putneedar of a portion of a — has a right to sue for possession.—4 W. R. 58.

49. A dur-putneedar who has come into possession of the superior tenure and is entitled to its profits, is bound to give notice of his title to the ryots so as to be able to recover rent from them.—4 W. R. (Act X) 38.

50. Not merely recorded shareholders, but all actual defaulters (such as joint putneedars) are prohibited from being purchasers of a —.—5 W. R. 106. *See* 14 W. R. 369.

51. Where a party holding a dur-putnee lease virtually abandons possession and takes a putnee of the same property, he cannot afterwards recover as damages the consideration he had paid for the dur-putnee.—5 W. R. 240.

52. Where a — is found to be *benamee*, a dur-putnee does not necessarily lapse.—*Ib.*

53. Fifteen years' receipt of rent by the purchaser of a — sold for arrears of rent under Reg. VIII of 1819, was held to be a waiver on his part of his right to evict the tenant under cl. 2 s. 11.—5 W. R. (Act X) 63.

54. A dur-putneedar cannot be ousted, so long as he pays his rents, except by regular course of law.—5 W. R., Mis., 51.

55. In a suit to set aside a sale by a Hindoo widow of part of a —, and a subsequent and alleged collusive sale for arrears under Reg. VIII of 1819, it was held that, if defendant was in possession under a title from the widow, his subsequent purchase did not give him a new title against those claiming through the widow.—6 W. R. 8.

56. A putneedar is not liable to make good payments made by the dur-putneedar to the zemindar to save the — from sale. Under s. 13 Reg. VIII of 1819, such payments must be made in Court.—6 W. R. 81.

57. On what circumstances plaintiff's right depends to recover consideration-money paid in respect of a village leased to him in putnee as mâl, but subsequently found to be lakheraj land belonging to another party.—6 W. R. 152.

58. A putneedar cannot question a transfer made and recognized by the zemindar before the creation of his putnee.—6 W. R. 190.

59. A decree reversing a sale of a — on the ground of non-service of notice, should allude to the return of the purchase-money and decide whether the purchaser is entitled to further damages and costs.—6 W. R. 321.

60. A registered dur-putneedar is liable for the rent, though he has sold his tenure to a party not acknowledged by the putneedar. A payment made by the purchaser who has not obtained registration is a voluntary payment, for which the dur-putneedar cannot claim deduction.—6 W. R. (Act X) 8. *See* (P. C.) 20 W. R. 380.

61. The sale of a — under Reg. VIII of 1819 is invalid if there was no arrear of rent at the date of sale, whether notice of the fact had been given to the Collector or not at the time of sale.—7 W. R. 218.

62. A putneedar is not liable to make good to a proprietor what the latter has paid on account of a defaulting co-proprietor's share of the Government revenue to save the estate from sale.—7 W. R. 247.

63. Where B having a lien of A's property sells A's rights and interests to D after A had given a putnee of the property to C, D was held to have no right in a suit against C, whose putnee was created before D's purchase.—8 W. R. 291. *See* 10 W. R. 151.

64. Where certain putneedars having agreed, at the time of a butwarra, that, in the event of a particular village falling wholly to either of them, they would re-unite and hold jointly as before, one party resiles from the agreement, the other party may sue for specific performance in the Civil Court only, the absence of mention of consideration in the agreement being no bar to its enforcement.—10 W. R. 69.

65. When putneedars in execution of a decree for *khas*

PUTNEE TALOOK (*continued*).

possession are put into nominal possession, and allow the ryots to cultivate and then cut and carry away their crops, their act is an abuse of the law of distraint, and they are liable for damages.—10 W. R. 70.

66. A payment made *bonâ fide* by the party in possession to save a — (the proprietorship of which was in litigation at the time) from sale for arrears of rent, is not a voluntary or officious payment, and is recoverable from whoever is declared to be the proprietor of the —.—10 W. R. 115.

67. A putneedar obtaining a pottah from a mortgagor subsequent to the mortgage and in violation of its conditions, cannot hold possession against the purchaser of the rights and interests of the mortgagor sold in execution of a decree. —10 W. R. 151.

68. A — can only be divided by an act of the zemindar, or an act recognized by him. A putneedar transferring his tenure without the zemindar's consent can only do so *in solido*, the transfer of a portion in no way affecting the entirety of the — or the zemindar's right.—11 W. R. 204.

Therefore the auction-purchaser of such portion acquires nothing.—15 W. R. 445. *See* 20 W. R. 275, 22 W. R. 511.

69. The mere fact of a person having been in possession of lands for 12 years paying rent is not sufficient to establish a dur-putnee tenure.—11 W. R. 358.

70. The inadvertent omission by a zemindar of one of the formalities prescribed by Reg. VIII of 1819 does not render all the proceedings taken by him inoperative, or constitute his selling the tenure into an act of trespass.—(P. C.) 11 W. R., P. C., 5. *See* 13 W. R. 314.

71. Where the purchaser of a — fails to obtain registry of his name in the zemindar's book, a third party claiming title from the vendor has no right to treat the purchaser as a tenant.—12 W. R. 161.

72. Permitting a putneedar to take extra land, and receiving rent from him for a series of years, cannot, in the absence of a kuboolent or verbal agreement, debar the proprietor from resuming possession.—12 W. R. 188.

73. A putneedar agreeing to pay the revenue out of his rent payable in monthly instalments, cannot deduct from an instalment of rent any portion of the revenue not payable till after the instalment is due.—12 W. R. 295.

But it is contrary to the usage of the country for a putneedar to pay his rents by monthly *kists* without a special agreement for that purpose.—17 W. R. 471.

74. The term — *primâ facie* imports a hereditary tenure. —12 W. R. 413.

75. A tenure in the nature of a — is alienable. —*Ib.*

76. Reg. VIII of 1819 considered with reference to the relative rights of zemindars and putnee talookdars. When a share in a — is transferred by a registered putneedar without the express consent of the zemindar and in disregard of the Regulation cited, the transfer is not binding on the zemindar.—(P. C.) 12 W. R., P. C., 43.

77. The surplus proceeds of a sale made for default of payment of putnee rent, though made under attachment by a Civil Court in the hands of the Collector, continue to be the property of the putneedar unless ordered to be paid away by an order from such Court.—13 W. R. 58.

78. In a case between the purchaser of a — at an auction sale under Act VIII of 1865 (B. C.) and a party claiming as dur-ijaradar, the point to be decided is whether the latter was *bonâ fide* in possession by collecting rents; and if so, the question of the voidance or voidability of the tenure is not one which can be disposed of in the Collector's Court.— 13 W. R. 68.

79. Partition of a —.—*See* Co-sharers 30.

80. Where a purchaser is made a co-defendant in a suit to set aside the sale of a —, and it is decreed that he may recover the purchase-money from the zemindar defendant, he may proceed in execution without a fresh suit.— 13 W. R. 161.

81. What was held to be a compliance with the provisions of Reg. VIII of 1819 regarding notice of sale.—14 W. R. 36. *See also* 22 W. R. 202.

82. The purchaser of a — under Reg. VIII of 1819 is not entitled to set at nought all decisions arrived at against the defaulting putneedar.—14 W. R. 283.

83. The zemindar, when applying to the Collector for the sale of a —, is not bound to recognize all the co-sharers of the —, but only the registered putneedar.—14 W. R. 489.

84. A dur-putneedar paying money as rent to save the — from sale, is entitled to a refund even though his name has not been registered in the sherista of the zemindar.— 15 W. R. 125, (*affirmed by P. C.*) 20 W. R. 380.

85. The *status* of a dur-putneedar does not depend upon registration or the consent of the zemindar.—*Ib. See also* 22 W. R. 299.

86. A putneedar who is disturbed in possession by the zemindar, is not liable for the kists which he is prevented from collecting.—15 W. R. 180.

87. Where a — is sold for arrears, the putneedar who is sold out is not liable for the rent of the month in which the zemindar presented the petition enjoined by cl. 3 s. 8 Reg. VIII of 1819.—*Ib.*

88. The special authority given by s. 37 Act XI of 1859 to an auction-purchaser passes to his putneedar of a portion of the estate purchased by him, and the putneedar can sue, within the prescribed period of limitation, to annul an under-tenure within the putnee and to eject the tenant; but not where the tenant was allowed to dig a tank and to remain in possession undisturbed by the former proprietor for upwards of 30 years, the presumption being that he was holding with the acquiescence of the former proprietor, which acquiescence must be treated as equivalent to a lease. —15 W. R. 481.

89. There is nothing in Reg. VIII of 1819 empowering a putneedar to deposit rent in the Judge's Court or Collectorate before the day of sale, or giving such payment the effect of a payment to the zemindar or his agent, entitling the putneedar to ask to have the sale annulled.—15 W. R. 560.

90. Where the agent of a shareholder of a — purchased the — in fraud of the other co-sharers, he was treated as having made the purchase on account of, and as trustee for, the other co-sharers.—16 W. R. 80.

91. A zemindar putting up for sale a — under Reg. VIII of 1819 guarantees to the purchaser that there are some lands appertaining to the —; if there are none, the purchaser may recover his purchase-money.—16 W. R. 128.

92. Where four suits are brought to set aside the sale of a — by four joint tenants, two of whom are not estopped under s. 7 Act VIII the sale cannot in equity be good or bad in part, but must stand or fall for the whole talook. But if one of the joint tenants in a former suit claimed a 2-anna instead of a 4-anna share, he cannot now be allowed to supplement the claim, or take interests independently of the sale.—17 W. R. 122.

93. On the death of a registered putneedar, a zemindar is not bound to recognize any one as his tenant without registration in his sherista, nor is he prevented from putting in a *serawal* to collect the rents until a declaration of the rights of the deceased putneedar's heirs.—*Ib.*

94. A tender to stay a sale under Reg. VIII of 1819 must be of the whole of the zemindar's demand and without any condition as to its being kept in deposit by the Collector.—*Ib.*

95. Fraud and collusion are only impartible where a sale is for arrears not really due.—*Ib.*

96. There is nothing in Reg. VIII of 1819 which will allow a — to be sold in separate lots even though the whole — be so sold in the same day.—17 W. R. 182. *See* 20 W. R. 275.

97. One of the several grantors of a *putnee* pottah cannot get rid of the *putnee* as to a share in it, by a suit as *ijaradar* of that share for rent against the ryots. The *putnee* must be upheld till set aside by regular suit.—17 W. R. 221.

98. Upon the sale of a — for arrears of the landlord's rent, the purchaser acquires it free of all incumbrances created by the outgoing putneedar, and according to s. 7 Act XIV, the purchaser's cause of action arises from the date of sale.—17 W. R. 407.

99. The purchaser cannot recover possession with damages, without previous notice or demand of possession. —*Ib.*

100. Where the sale of a — for default was reversed on the ground of notice not having been served as required by law, the purchaser was held entitled to a refund (with interest) and to his costs from the zemindar.—17 W. R. 447; 21 W. R. 252. *See* 25 W. R. 142.

101. A zemindar cannot bring a suit to compel the purchaser of a — sold for arrears of rent, to furnish security to the amount of half the yearly jumma; his remedy being under ss. 5 and 7 Reg. VIII of 1819, to appoint his own

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sezawal and deduct his own rents before making over the surplus to the putneedar, who takes all the risk of the attachment. The remedy of the zemindar is not affected by the grant by him of a *dur-putnee* to another party.—17 W. R. 470.

102. A putneedar sued his zemindar and obtained a decree for abatement of the putnee rent on the ground that the assets of the — fall short of the amount stated in the lease. Whilst this suit was pending in the Civil Court, the zemindar brought a suit for the rent of two years upon the full jumma; and though the putneedar objected that his suit for abatement was pending, the Collector decreed the rent-suit in full. In execution the zemindar recovered the full rent; whereupon the putneedar sued for a refund of excess payment and of the interest realized by the zemindar thereon. *Held* that the decree of the Revenue Court was suspended and modified by the decree of the Civil Court subsequently affirmed in appeal; that plaintiff's cause of action accrued on the date when the zemindar recovered rent in excess of what plaintiff was jointly liable for, and also interest on such excess; and that the abatement was to take effect from the commencement of the putnee lease.—18 W. R. 434.

103. Where one individual holds a — by paying rent in equal shares to two owners of the zemindaree, the division is the joint act of the putneedar and the zemindars, and is as if each of the zemindars had granted to the same person his share in putnee.—20 W. R. 275.

104. It is not open to a putneedar of his own choice to throw up the putnee, and by so doing, escape his liability to pay rent. The contract, though not indissoluble, can only be dissolved by an act of the Court and after proper enquiry.—20 W. R. 383.

105. The proviso in cl. 6 s. 17 Reg. VIII of 1819 is substantially complied with, with reference to the uncertainty as to who was the person to whom rent was due, where payment is made for the period for which the rent of the superior landlord was unpaid.—21 W. R. 219.

106. If a — is sold for arrears of rent without the notice required by Reg. VIII of 1819, the sale is informal and can be set aside notwithstanding the *bona fides* of the purchaser.—21 W. R. 252.

107. The purchaser at a *putnee* sale is not empowered to collect rent at a higher rate than was demandable by his predecessor without establishing his right to do so by a regular suit.—21 W. R. 326.

108. So long as the cutcherry at which notice of sale of a — for arrears of rent is served on a defaulter as required by cl. 2 s. 8 Reg. VIII of 1819, is an adjacent one in which all the business of the defaulting *putnee* is carried on and is on land belonging to the defaulter, publication at that cutcherry is a sufficient publication.—21 W. R. 369.

109. In a suit by a putneedar to recover rent in accordance with the terms of a dur-putnee lease, the defendant claimed an abatement of his *putnee* rent on the ground that his predecessor had obtained such abatement in a previous rent-suit in which it appeared that the lessor's share was slightly less than what was described in the lease. *Held* that, unless defendant could show that he had been damaged by plaintiff's misrepresentation as to the extent of his share, he could not be relieved from his contract, at least in this shape.—21 W. R. 372.

110. Where certain mortgages were in existence at the time a *putnee* was granted, the interest under the *putnee* did not pass.—21 W. R. 427.

111. The fact of a putneedar having made separate payments of rents, of having registered his name with each of the sharers, and of being prepared to enter into a fresh engagement with one of them, does not amount to a cancellation of the original lease and substitution of a new lease.—22 W. R. 50.

112. S. 46 Act VIII of 1869 (B. C.) applies to putnee talookdars, the term "under tenant" being wide enough to include them.—22 W. R. 431.

113. Where a zemindar puts up a — for sale under Reg. VIII of 1819, knowing that the rent due to him has been paid into Court by the putneedar, the sale is invalid, even if the notice served on the zemindar was illegally served.—24 W. R. 63.

114. A dur-putneedar under an auction-purchaser, suing for possession, is entitled to get rid of the occupancy of defendants occupying the land, unless the latter can show that they come within the privileged class.—25 W. R. 90.

115. Where a — had been sold for arrears of rent, and certain persons, claiming to have been in possession of the superior zemindaree rights in the estate, had sought on a former occasion to set aside the sale, but had failed, and now renewed the attempt,—*Held* that, even if the claims of those persons to the zemindaree rights had been proved which was not the case, they could not now repeat their former claim against the putneedar in a new form; nor could they, after having always maintained that there was no — and that they held and occupied the lands in dispute as proprietors, now be allowed to fall back upon the plea that, if not proprietors, they have throughout held the lands as putneedars and duly paid the putnee rent for the same.—25 W. R. 321.

116. A person who was interested in a — and knew that an alleged deposit by the dur-putneedar under s. 13 Reg. VIII of 1819 was a mere sham and was merely a device to preserve the — in the hands of persons claiming to hold adversely to him, was held bound to challenge the deposit within 12 years from the time he knew of such deposit.—25 W. R. 434.

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,, (Act XIV of 1859) 40, 43, 76, 207, 240, 296.
Measurement 16.
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Mortgage 102, 109, 232, 239.
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Onus Probandi 15, 40, 106, 118, 254.
Partition 33.
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,, (Parties) 39.
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PUTNEE TALOOK (*continued*).

See Vendor and Purchaser 22, 80.
Voluntary Payment 7.
Zemindaree Dak 1, 2, 3.

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See Enhancement 247.
Evidence (Oral) 47.
Mortgage 26.
Rent 107.

Quit-Rent.

See Ghatwals 18.
Interest 104.
Notice 18.
Service Tenure 2, 3, 4, 12.
Trees 6.

Railway.

1. Where a — Company did not keep a station properly lighted, allowed a train to over-shoot the station, and did not warn plaintiff against alighting, and the latter received severe injuries from a fall in stepping on the platform when the train stopped, these injuries were held to have been caused by the Company's negligence, and not by his own want of care.—9 W. R. 73.

2. The liability of the E. I. — Company, as common carriers with respect to ordinary goods, is not restrained by s. 11 Act XVIII of 1864 when loss is caused by gross negligence or misconduct.—14 W. R., O. J., 11.

3. In a suit against a — Company for the value of goods consigned to plaintiff, which defendants had received for delivery to plaintiff according to a — receipt, but which they had delivered to T and Co.,—*Held* that the handing over by consignors of the — receipt to plaintiff passed the right of possession and property to plaintiff who had a substantial interest in the consignment, and that the authority given to him by the consignors was coupled with an interest which neither they nor defendants could revoke; and as plaintiff had no notice of T and Co.'s equitable title, defendants were not justified in delivering to T and Co. and were liable for the wrongful delivery.—(O. J.) 17 W. R. 532.

See Abatement 13.
Carrier 4, 5.
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Jurisdiction 480.
Land Taken for Public Purposes 2, 3, 4, 17, 19.
Negligence 3.
Practice (Attachment) 22.
Right of Way 5.
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Raj.

See Attgurh Raj.
Doomraon Family.
Family Custom 5.
Hindoo Law (Inheritance and Succession) 33, 37, 45, 83, 90.
Hosaipore Raj.
Keonghur Raj.
Nattore Raj.
Onus Probandi 47, 57, 121.
Pacheet.
Primogeniture 1.
Ramghur.
Ramnuggur.
Rawutpore.
Relinquishment 18, 19.
Shoosung Estate.
Tanjore.
Tipperah.
Witness 1.

Rajshahye.

See Jurisdiction 880.

Ramaswaram.

See Hindoo Law (Religious Ceremonies) 3.

Ramghur.

See Hindoo Law (Inheritance and Succession) 92.
Jurisdiction 2.

Ramnuggur.

1. Held that the appellant had failed to establish the alleged marriage of his father with his mother, and that consequently his claim as a legitimate son of the late Rajah of — could not be sustained; that he was not entitled to inheritance as the illegitimate son of the Rajah, because his father, who was a Rajpoot, was a *Khatri* or one of the three regenerate or twice-born races, whose illegitimate sons could not inherit; but that he was entitled to maintenance out of his father's estate.—(P. C.) 1 W. R., P. C., 132 (P. C. R. 313).

2. Disputed possession as to a portion of the — zemindaree.—(P. C.) 12 W. R., P. C., 6; 22 W. R. 165.

Rangoon.

See Small Cause Court 31.

Rank.

See Arrest 3, 5.
Witness 1, 78.

Rape.

1. The consent to render a charge of — nugatory must be a free consent obtained without putting a woman in fear of injury.—1 W. R., Cr., 21.

2. Questions of consent should be left to the Jury.—*Ib.*

3. Held to be improbable, and physically impossible, that a girl of tender age should be killed by any violence in — and not show any external signs of violence.—1 W. R., Cr., 29.

4. Measure of punishment in a case of —.—6 W. R., Cr., 59.

5. Dying declarations are admissible in cases of —.—6 W. R., Cr., 75.

6. Extent of rigorous imprisonment awardable for attempt at —.—10 W. R., Cr., 10.

See Error 7.

Ratification.

1. A more distinct — of a *mourosee* lease is necessary than a casual advertence to the lessee as mourosedar in a paper having reference to a third party, or than receipts in which the lessee was so styled.—1 W. R. 127.

2. Long inaction after a party to a contract has become aware of his right to repudiate it, must, when unaccounted for, be held in equity to be a —.—9 W. R. 110.

So also as regards a minor.—13 W. R. 166, 172.

But mere silence for a period short of that prescribed by the law of limitation does not *per se* amount to —.—18 W. R. 404.

Nor want of notice of intention to repudiate.—18 W. R. 404.

RATIFICATION (*continued*).

3. Where a person, after attaining his majority, conducts a suit in his mother's defence and signs a written defence showing that the purchaser from her of property sold during his minority was entitled to what he claimed, his conduct amounts to acquiescence in and — of the sale.—9 W. R. 571.

4. Acceptance of rent from a party claiming to hold under a lease, without notice of intention to dispute the validity thereof, is tantamount to a — of the lease.—12 W. R. 299.

So also as regards minors after they come of age.—25 W. R. 71.

5. Acceptance of rent after a Hindoo widow's death by the reversionary heir from the holder of a tenure granted by the widow, is tantamount to a — of the tenure.—24 W. R. 127.

See Compromise 4.
Ejectment 97.
Guardian 86.
Hindoo Law (Adoption) 87.
Jurisdiction 45, 111.
Lease 67.
Mahomedan Law 86.
Minor 18.
Partition 3.
Pre-emption 21.
Principal and Agent 7.

Rawutpore.

Held upon the evidence as to the family custom and usage for about eight generations, that the Raj of — was indivisible and descended entire to the eldest son to the exclusion of the other sons.—(P. C.) P. C. R. 227.

Razeenama.

See Compromise 8.
Onus Probandi 56.
Stamp Duty 31.

Rebel.

Property of —.—*See* Forfeiture; Limitation 43, 67, 234: Mokurruree Tenure 4; Rent 16; Sale 144.

See State Offences.
Streedhun.

Receipt.

1. A — of payment of Government revenue is not sufficient evidence of title or possession.—Sev. 928, 3 W. R. 133, 17 W. R. 490.

2. Nor is it evidence of necessity for sale of ancestral property.—8 W. R. 519.

3. A *challan* with a *mubluk bundi* or total in figures, and some mark (not a signature) of the Tehseeldar, is not a — within the meaning of s. 10 Act X of 1859.—13 W. R. 22.

4. A — on the back of a promissory note or bill of exchange, is capable of being explained, and may import merely substitution of another bill or note for the same debt.—(O. J.) 17 W. R. 201.

5. Possession of a Collectorate *challan* by a mookhtar is *primâ facie* proof of payment by him of a fine levied by the Collector in a *butwarra* case.—17 W. R. 502.

See Co-sharers 24.
Costs 86, 62.
Damages 39, 40, 89.
Ejectment 74.
Enhancement 248.
Evidence (Documentary) 107.
„ (Estoppel) 188.
Hindoo Law (Coparcenary) 29, 78.
Jurisdiction 480.
Lease 88.
Possession 80, 88.
Practice (Possession) 28.
Railway 3.
Registration 107, 145.
Rent 83, 108.
Sale 54, 169.
„ Law (Act XI of 1859) 25.
Stamp Duty 80.
Title 12.
Waiver 1.
Written Statement 2.

Receiver.

1. Suit for past mesne profits by — who was also reversioner.—S. C. C. 26.

2. A — appointed by order of the Supreme Court can only sue for possession, and has no right to question the title of a third party in a suit regarding the property put under his management.—2 Hay 395.

3. A — has no estate or interest in himself; his power to grant leases is created simply by the order of the Court appointing him, binding and operating upon the estates of those who are parties to that order and against whom it is made, but not affecting those persons who were not before the Court.—Sev. 951.

4. A Principal Sudder Ameen cannot, like the Court of Chancery, appoint a — in a case where defendant has long kept plaintiff out of assets to which he is entitled jointly with defendant.—6 W. R., Mis., 1.

5. The — of the High Court has no title as of right to the immediate possession of any property, but must put in action the Court which made him —.—10 W. R. 430.

6. Where a —, since deceased, instead of repaying the advances made to him by a decree-holder, remits the whole amount of collections and pays them into Court, the Court has jurisdiction to enquire how far the sums alleged were advanced *bonâ fide* in conformity with its order, and whether the decree-holder is not entitled to be repaid.—11 W. R. 224.

See Co-sharers 47.
Error 5.
Injunction 8.
Mesne Profits 19.
Practice (Attachment) 18, 36, 48, 58.
Res Judicata 53.
Stolen Property.

Recognizance.

1. — not necessary from persons acquitted.—3 W. R., Cr., 33.

2. An unproved charge of false imprisonment is not the "credible information" contemplated in the law, on which a Magistrate may take — to keep the peace.—6 W. R., Cr., 1.

3. An order is not warranted by s. 280 or s. 282 Act XXV of 1861 if, on the face of it, it does not show that the Magistrate had received credible information that the persons ordered to enter into their — were likely to commit a breach of the peace, or to do any act tending thereto.—6 W. R., Cr., 92. *See also* 10 W. R., Cr., 1; 14 W. R., Cr., 3; 19 W. R., Cr., 32.

4. The order of a Magistrate, directing the prisoner, on the expiration of his sentence for the offence of criminal trespass, to execute — to keep the peace, was upheld as legal and necessary.—7 W. R., Cr., 14. *See also* 20 W. R., Cr., 37.

5. A complainant's statement (believed by the Magistrate) that he expected the defendant at any time to make an attempt on his person or property is credible information, under s. 282, of an intended breach of the peace.—7 W. R., Cr., 30; 8 W. R., Cr., 79.

So also the statements of either or both of the contending parties.—18 W. R., Cr., 11.

RECOGNIZANCE (*continued*).

6. A petition unsupported by any complaint or deposition on solemn affirmation, cannot be considered credible information, within the meaning of s. 282, of an intended breach of the peace.—8 W. R., Cr., 85.

7. A summons under s. 282 can legally issue on information, if credible, contained in the record of a case in which the person summoned was charged with unlawful assembly and acquitted. But before a bond can be taken from him, the adjudication by the Magistrate must be based upon a re-examination of the witnesses before the accused so as to give him an opportunity of cross-examining them. —10 W. R., Cr., 1, 46, (*affirmed by F. B.*) 12 W. R., Cr., 60; 14 W. R., Cr., 3; 16 W. R., Cr., 45; 18 W. R., Cr., 2; 24 W. R., Cr., 23.

8. The report of a Police Officer is *credible information* under s. 282.—10 W. R., Cr., 41. *But see* 10 W. R., Cr., 55.

9. The estreating of — when to be resorted.—11 W. R., Cr., 39; 12 W. R., Cr., 54; 15 W. R., Cr., 14.

10. A Magistrate cannot make an order for defendant to enter into a bond to keep the peace until after an adjudication that it was necessary for the preservation of the peace to take a bond from him.—11 W. R., Cr., 50. *See also* 12 W. R., Cr., 16; 15 W. R., Cr., 43; 20 W. R., Cr., 18.

11. A Magistrate, in discharging —, exceeds his jurisdiction in giving directions as to the disposition of the property in dispute between the parties.—13 W. R., Cr., 44.

12. Where a Magistrate, in convicting the accused of the crime charged, also required him, under s. 280 Act XXV of 1861, to enter into — to keep the peace, and the Sessions Judge on appeal, in affirming the conviction, cancelled the order for taking —, the Sessions Judge's order cancelling the — was set aside as passed without jurisdiction, and the Magistrate's order restored in its integrity.—13 W. R., Cr., 73.

13. Where A has been bound over to keep the peace under s. 281 Act XXV of 1861 at the instance of B, a Deputy Magistrate cannot order him to enter into fresh — to keep the peace on account of fresh disputes with C, but should refer the case to the Court of Sessions under s. 298.—15 W. R., Cr., 18.

14. An order calling for — under s. 280 or for security under s. 281 Act XXV of 1861 must be passed at the time of deciding the original case; otherwise, subsequent proceedings under s. 282 will be necessary.—15 W. R., Cr., 56.

15. In proceedings taken for forfeiture of —, the person against whom they are held is competent to give evidence on oath on his own behalf.—15 W. R., Cr., 87.

16. *Quære.* Whether, when — are forfeited, a Magistrate is bound to forfeit the *whole* amount of the bond.—*Ib.*

Under s. 293 Act XXV of 1861, the Magistrate cannot forfeit a *portion* of the penalty.—19 W. R., Cr., 1.

17. A Magistrate acts without jurisdiction in making an order binding a person to keep the peace, when there is no complaint before him of a breach of the peace being likely to be committed by such person and without taking any evidence in the matter.—17 W. R., Cr., 35.

18. When the manager of an indigo factory is obliged to enter into — to keep the peace under s. 288 Act XXV of 1861, there is no reason, nor has the Magistrate any authority, to extend the order to the proprietor of the factory also.—18 W. R., Cr., 11.

19. There is no reason why the Magistrate, if he is satisfied that the circumstances require it, should not make an order under s. 318 as well as under s. 288.—*Ib.*

20. To take a second — before expiry of the period fixed in the first — is virtually an interference with s. 290.—18 W. R., Cr., 44. *But see* Security 4 and 18 W. R., Cr., 57.

21. Where a person has been bound down by — not to commit a breach of the peace, the amount of the — cannot be recovered from him if he is guilty of an offence which does not amount to, or is not likely to occasion, a breach of the peace (*e.g.*, theft).—18 W. R., Cr., 63. *See also* 19 W. R. 48.

22. The "act" referred to in s. 282 Act XXV of 1861 must be a wrongful act, so as not to prevent a person from exercising his right of property because another person is likely to commit a breach of the peace if he did so.—19 W. R., Cr., 47.

23. The powers contained in ss. 396 and 397 Act X of 1872 apply not only to — taken by a Magistrate, but also to — taken by a Police Officer under s. 125.—22 W. R., Cr., 74.

See **Onus Probandi 198.**
Security 2, 3, 4, 5, 7, 8, 10, 17, 24.

Record.

The Court declined to accept, as authenticated papers of the —, papers which bore no signature, no seal, and no other marks of authenticity.—8 W. R. 163.

See **Evidence 91.**
,, (Documentary) 85, 87.
Interlocutory Order 1.
Murder 26.
Paper Book.
Practice (Amendment) 17.
,, (Criminal Trials) 5, 10, 43, 48.
,, (Suit) 13, 24, 50, 59.
Remand 54.

Recorders.

1. — appointed under Act XXI of 1863 possess all the jurisdiction relative to minors referred to in s. 1 Act IX of 1861 or intended to be given by that Act.—3 W. R., R. C., 5.

2. Jurisdiction of Recorder's Court in cases of trespass to personalty in a Foreign State, the title to which depends on right to land in such Foreign State.—6 W. R., C. R., 4.

3. With reference to s. 18 Act XXI of 1863, an *advocate*, not a barrister, cannot sue upon a promissory note given in anticipation for fees not taxed, nor can the Court in such suit award him a *quantum meruit* for his services.—7 W. R. 390.

4. A Recorder has no jurisdiction under s. 11 Act XXI of 1863 in a suit to make a judgment passed in the Court of Queen's Bench in London a judgment of the Recorder's Court, and to enforce it as such.—9 W. R. 215.

5. Where one son of a deceased party sues another who has obtained a certificate under Act XXVII of 1860 for his share of the deceased's estate, the Recorder's Court cannot transform the suit into a general administration suit, but may under s. 73 Act VIII order all necessary parties claiming a share or interest in the subject-matter of the suit to be made parties.—10 W. R. 86.

6. A Recorder under Act XXI of 1863, being the holder of Bank of Bengal shares, has power to dispose of a suit to which the Bank is a party, in a case of necessity, as when the Commissioner also has shares in the Bank.—12 W. R. 185.

7. The authority given to the Recorder of Moulmein to grant or withdraw a license to practise as an advocate or a pleader in his Court or any division of his Court, was interfered with by the High Court where the Recorder suspended an advocate or pleader from practice without specifying a distinct charge against him and giving him an opportunity to answer that charge.—14 W. R. 257.

8. Act XXI of 1863 contains no provision enabling the Court of the Recorder to deal with suits or proceedings previously pending in any other Court, or to continue in the way of execution, or otherwise, any matters commenced or decided in other Courts.—14 W. R. 385.

9. The Court of the Recorder of Rangoon has no jurisdiction in a suit brought against a defendant dwelling in Surat, though the cause of action arose in Rangoon. —18 W. R. 397.

10. Where the Recorder of Rangoon suspended an advocate for entering into a contract contrary to public policy, the High Court, considering that other advocates did the same, thought that a serious warning was all that was called for under the circumstances.—21 W. R. 297.

See **Administration.**
Appeal 141, 178.
High Court 31, 104.
Will 30.

Re-entry.

1. When the pottah contains a condition of — by the zemindar upon non-payment of rent, s. 105 Act X of 1859 does not take away this right, even if the tenure itself be saleble.—2 Hay 525.

2. Although a pottah may not contain words specifying the right of —, it must be reasonably construed; and where there are express words really involving that right, effect must be given to them.—5 W. R. (Act X) 17.

3. Even if the zemindar thinks that the ryot has absconded, the former has no right of — on the land without the assistance of the law.—12 W. R. 110.

4. Even where a lessee's interest is transferable, the landlord is not obliged to recognize a transfer, if the effect of so doing would be to defeat his own right of —.—20 W. R. 189.

5. Where an old lease has expired and the lessee does not choose to take a new lease which is offered, the landlord's claim to — cannot be styled a penalty in the sense in which forfeiture of a lease would be upon non-performance of a contract.—20 W. R. 357.

See Ejectment 10, 42, 49, 51.
Landlord and Tenant 38.
Lease 5, 7, 23, 38, 57, 70.
Mokurruree Tenure 25.
Mortgage 284.
Occupancy 4, 88.
Onus Probandi 81.
Putnee Talook 13, 33.
Zur-i-peshgee Lease 32.

Refund.

1. Zemindars, and not the ryots, are entitled to a — of money paid as revenue to the Government in respect of resumed land subsequently released.—1 R. J. P. J. 152 (Sev. 308).

2. A suit for the — of moneys recovered in execution of a decree for enhancement of rent, is not cognizable at all under Act X of 1859; nor is it admissible in any Civil Court as being *res judicata*. The remedy is to apply in the Summary Department for execution of the decretal order directing the —, and to appeal summarily from the order of the Judge erroneously referring the defendant to a regular suit.—Sev. 18.

3. A claim for a — of rent paid in excess must be brought in the Civil Court.—2 W. R. (Act X) 30, 91; 16 W. R. 173; 24 W. R. 352. *See* 9 W. R. 92, 10 W. R. F. B. 41, 13 W. R. 34.

It is a suit for damages.—11 W. R. 30.

4. A person cannot discharge himself from legal liability to — moneys belonging to one of whose title he has notice, by paying them to another.—7 W. R. 225.

5. A suit (but not an appeal) will lie for — of proceeds of sale in execution of decree paid to a wrong party under s. 270 Act VIII of 1859.—(F. B.) 9 W. R. 514 (*Over-ruling* W. R. F. B. 180; L. R. 99). *See* 13 W. R. 136, 16 W. R. 11, 23 W. R. 373.

6. Where a — is claimed of the proceeds of an execution-sale on the ground that the decree has been satisfied by compromise, the case ought to be tried under s. 11 Act XXIII of 1861.—23 W. R. 207.

See Abatement 10.
Adjustment 14.
Ancestral Property 14.
Arrest 6.
Bond 16*a*.
Costs 97.
Illegal Gratification 6.
Income Tax 1.
Indigo 13.
Interest 79.
Julkur 15.
Jurisdiction 265, 292, 330, 359, 448.
See Limitation 47, 125, 198, 258.
„ (Act XIV of 1859) 254, 289.
Madras Civil Service Annuity Fund.
Mesne Profits 96.
Minor 27.
Money-Decree 1.
Mortgage 84, 241, 284, 289, 295, 298.
Onus Probandi 164.
Partnership 10.
Practice (Execution of Decree) 183, 225.
Privy Council 72.
Public Policy 2.
Purchase-Money 2, 5.
Putnee Talook 84, 100, 102.
Registration 129.
Remission 1.
Rent 12.
Sale 132, 157*a*, 189, 222, 223.
„ Law (Act XI of 1859) 19.
Special Appeal 25.
Specific Performance 1.
Splitting Cause of Action 15, 16.
Stamp Duty 7, 13, 15, 16, 24, 36, 48, 59.
Vendor and Purchaser 43, 54, 65, 75.

Registration.

1. — by the Collector in 1795 as lakheraj affords presumption of lakheraj having commenced before 1790.—W. R. F. B. 95 (2 Hay 613).

2. A Collector may register as farmer a person to whom a farming lease has been given, but who in reality holds the farm as agent of another; and a third party has no right to intervene to compel the — of such other person.—1 Hay 133 (Marshall 65).

3. — in the zemindar's office is not necessary to a party who has established his rights in a suit against the zemindar, through the medium of the Courts.—1 Hay 170.

4. — in the Collectorate books is not conclusive proof either of title or of adverse possession.—Sev. 854, 10 W. R. 393, 14 W. R. 49. *But see* (P. C.) 11 W. R., P. C., 35.

5. A registered deed of sale gives the vendee no preferential right under Act XIX of 1843, to avoid an unregistered lien given by the vendor to his judgment-debtor.—W. R. Sp. 141.

6. A subsequent registered mortgage was held, under s. 2 Act XIX of 1843, to invalidate a prior unregistered bond.—W. R. Sp. 226.

Also a prior unregistered mortgage.—10 W. R. 291, 16 W. R. 270.

7. The rule giving a registered document preference over an unregistered one, does not apply to deeds of different descriptions.—W. R. Sp. 387 (L. R. 158).

8. Mere cognizance by the zemindar of the fact that a party has purchased a tenure, cannot make up for the defect of non — of such purchase in the zemindar's sherista.—W. R. Sp. (Act X) 98 (3 R. J. P. J. 34).

9. Presumption of title and no title from — and non — under s. 20 Reg. XXXVII of 1793.—(P. C.) 5 W. R., P. C., 26 (P. C. R. 46).

10. — of a talook or of the sunnuds creating it, not absolutely necessary to prove the creation of the talook before the Decennial Settlement.—(P. C.) 3 W. R., P. C., 5 (P. C. R. 563).

11. Construction of s. 2 Act XIX of 1843.—(P. C.) 3 W. R., P. C., 43 (P. C. R. 600). *See* 10 W. R. F. B. 51, 11 W. R. 128.

12. A person cannot claim under an unregistered verbal contract of sale to the detriment of another holding *bonâ fide* under a registered deed of sale.—1 W. R. 78.

13. Under Act XIX of 1843 a registered *kubala* will take precedence over a prior unregistered one.—1 W. R. 206.

But not where there has been no transfer or making over of possession.—8 W. R. 300.

So also under s. 48 Act VIII of 1871.—22 W. R. 273.

Nor when the original vendor is dead and the second

REGISTRATION (*continued*).

vendors are the persons who, but for the first sale, would have inherited the property.—11 W. R. 128.

14. A purchaser of a Government khas mehal is not bound by the unregistered and unrecognized transfer of the rights of any of the original tenants, but may sue them for the rent.—1 W. R. 225 (3 R. J. P. J. 278).

15. The benefit of priority over an unregistered deed of sale does not extend to a registered document which, although in form a deed of sale, is in truth a fraudulent deed of gift.—1 W. R. 314. *See* 8 W. R. 300.

16. Under Act XIX of 1843, a deed of sale is not to be deemed authentic merely from the fact of — and production in other cases.—3 W. R. 216. *See also* 10 W. R. 215.

17. A zemindar is not bound to accept and register any sub-division of a tenure previously registered as undivided. —3 W. R. (Act X) 165.

18. Act XIX of 1843 does not give a registered *kubala* precedence over a prior unregistered mortgage under which enjoyment has actually taken place.—4 W. R. 30. *See* 12 W. R. 217.

19. A purchaser for valuable consideration from the owner in possession is not bound by an unregistered mortgage of which the purchaser had no notice.—4 W. R. 67.

20. S. 5 Reg. XX of 1812 is not applicable to hoondees or other similar negotiable mercantile securities.—4 W. R. 98.

21. A registered deed of sale does not invalidate a prior unregistered mortgage, under Act XIX of 1843.—(F. B.) 5 W. R. 61. *See also* 11 W. R. 559.

22. A *bonâ fide* purchaser for value without notice is not entitled to priority over a prior unregistered mortgage.—*Ib.*

23. Act XIX of 1843 does not apply to pottahs; and consequently a subsequent registered pottah cannot prevail over a prior unregistered pottah.—5 W. R. 205. *See also* 10 W. R. 374.

24. S. 51 Act XVI of 1864 does not require a Registrar to record the agreement there spoken of entirely with his own hand. The signature of the Registrar is sufficient.—5 W. R., S. C. C., 14.

25. Before enforcing, under s. 52, a duly registered bond without suit, proof of the signature or handwriting of the Registrar is not necessary; but the document with the endorsement of — and the agreement recorded therein, becomes a record, and is, under s. 37, of itself *primâ facie* proof of —.—*Ib.*

26. A certificate of — is evidence that a bond was registered, but not that it was executed.—6 W. R. 105.

27. S. 15 Act XVI of 1864 applies only to cases in which the Registrar has improperly refused to register an instrument.—6 W. R., Mis., 61. *But see* 9 W. R. 576.

28. A person whose application for the enforcement under s. 52 Act XVI of 1864 of a specially registered bond has been refused, is in the position of a decree-holder whose application to execute his decree has been dismissed or thrown out of Court, and has his remedy by appeal and special appeal, but not by petition to the High Court.—6 W. R., Mis., 120.

29. The Registrar, to whom a deed is presented for —, is bound to register it if the party applying for — has complied with s. 29 Act XVI.—6 W. R., Mis., 130.

30. In cases of application to the Court under s. 53 Act XX of 1866, the Court ought not to summon the defendant, but the applicant is entitled to a decree merely on production of the obligation and the record duly signed. —6 W. R., C. R., 11. *See also* 9 W. R. 477.

31. Under s. 55 of the same Act the Court may after decree, on a representation by the judgment-debtor, set aside the decree and stay or set aside execution.—*Ib. See also* 25 W. R. 322.

32. There is no provision in Act XVI of 1864 obliging or empowering a Registrar to register a deed after expiry of the time specified in s. 18, whether under a decree of Court or otherwise, except in cases which come under s. 15. —7 W. R. 112, 150.

33. What is necessary for the purpose of impeaching a deed of sale registered under Act XVI of 1864, so as to prevent the operation of s. 68.—7 W. R. 119. *See* 10 W. R. 36, 14 W. R. 318, 20 W. R. 287.

34. With reference to s. 55 Act XX of 1866, no appeal lies from an order refusing to allow the amount due under a decree passed upon a specially registered obligation to be levied by instalments and directing immediate enforcement of the decree.—7 W. R. 130.

The appeal is taken away by s. 55 equally in matters of execution as in respect of the decree passed.—18 W. R. 517, 23 W. R. 328, 24 W. R. 225, 25 W. R. 322.

35. A *dowl-durkast*, or an agreement for a deed of a nature which requires —, need not be registered under s. 13 Act XVI of 1864.—7 W. R. 280, 12 W. R. 394. *See also* 93 *post.*

36. In a suit for rent, where defendant admits the debt but pleads payment, the non — of the kubooleut is no ground for dismissing the suit, but may be raised as an objection when the kubooleut is tendered as evidence on a disputed point.—7 W. R. 334, 14 W. R. 429.

37. The zemindar need not ordinarily look beyond his register for the sale of a tenure of a registered defaulter.—7 W. R. 409.

Nor is he bound to recognize a private transfer by an unregistered purchaser.—25 W. R. 152.

38. S. 17 Act XVI of 1864 does not exclude evidence from deeds executed prior to the passing of the act, but only encourages early — of old deeds.—8 W. R. 86.

39. The transferree of a tenure not in possession, instead of depositing rents in Court under s. 4 Act VI of 1862 (B. C.), should take steps under s. 27 Act X to register his transfer in the zemindar's sherista, and to apply to the Collector if the zemindar refuses to do so.—8 W. R. 138.

40. An unregistered *hibbanamah* executed before Act XVI of 1864 came into operation, is admissible as evidence.—8 W. R. 269.

41. When an application for — was made before Act XX of 1866, any person interested may sue to establish right to — under s. 15 Act XVI of 1864.—8 W. R. 423. *See* 52 *post.*

42. Where a suit is to enforce a contract from which a vendor has resiled, there is nothing in the — law to prevent plaintiff from enforcing the contract, notwithstanding the subsequent sale to a third party and — of such subsequent deed.—*Ib.*

43. A suit under s. 15 Act XVI of 1864 is a regular and not a summary suit.—9 W. R. 101. *See also* 6 W. R. 130.

44. The — of a bond for money in which land is pledged as a mere collateral security, is not compulsory under cl. 2 s. 17 Act XX of 1866, but optional under cl. 7 s. 18.—9 W. R. 111.

So also of an agreement to deposit deeds and execute an agreement.—11 W. R. 520. *See also* 10 W. R. 252, and (*F. B.*) 76 *post.*

And an agreement to execute a conveyance of landed property.—15 W. R. 354.

But the — of an *istifanamah* or deed of surrender of pledged property is compulsory under cls. 2 and 3 s. 17, and not optional under cl. 7 s. 18.—16 W. R. 56.

45. The reception as evidence of such an unregistered bond for money as aforesaid, is not barred by s. 49 of same Act.—*Ib.*, (*Affirmed by F. B.*) 12 W. R. F. B. 11.

46. A zemindar has a perfect right to bring a tenure to sale for arrears of rent without regard to the rights of the new tenant while he is yet unregistered.—9 W. R. 161.

If he does so with reasonable promptness and provided he has not done anything to recognize the transfer.—23 W. R. 106.

47. Where — is compulsory, unregistered deeds are inadmissible as evidence; and where — is optional, a registered deed of later date relating to the same property is, under s. 68 Act XVI of 1864, entitled to preference over an unregistered one.—9 W. R. 282. *See also* 9 W. R. 547; 12 W. R. 456; 14 W. R. 318, 483.

48. An unregistered deed of sale cannot be received as evidence of a contract; but s. 13 Act XVI of 1864 does not exclude other evidence.—9 W. R. 351. *See also* 20 W. R. 310. *See* 52 *post.*

49. A plaintiff may be permitted to show that the non — of a deed of sale was owing to the fraudulent conduct of his adversaries.—*Ib. See also* 9 W. R. 528 and 52 *post.*

50. Where an agreement recorded on a bond only binds the obligor and not his heirs, a decree cannot be passed against the heirs under s. 53 Act XX of 1866.—9 W. R. 498.

51. A kubooleut is not a "lease" within the meaning of s. 13 Act XVI of 1864.—9 W. R. 537. *See* 12 W. R. 289, 394; 23 W. R. 170.

52. Where a document which is required to be registered, is not registered, owing to the alleged fraud of the vendor,

REGISTRATION (*continued*).

the vendee cannot bring a suit to enforce his right to the property, and in that suit ask the Court to receive the unregistered document in evidence on the ground of the fraud of the defendant; neither can he rely on the preliminary parol agreement between himself and the vendor, even though the subject of the transfer be land, which, if the parties be not affected by the English law, passes by mere parol. The agreement having been reduced to writing, the parol contract cannot be admitted; and the writing being unstamped, is not admissible. Plaintiff's course is to proceed under s. 84 Act XX of 1866.—(F. B.) 10 W. R. F. B. 51. *See* 15 W. R. 189, 18 W. R. 504, 24 W. R. 320.

So also in a suit for possession as in one for declaration of title.—11 W. R. 398.

53. The word "instrument" in s. 50 of same Act refers to an honest *bonâ fide* instrument, and does not include a fraudulent one.—(F. B.) 10 W. R. F. B. 51, 14 W. R. 24, 20 W. R. 110.

54. S. 50 Act XX of 1866 is not to be construed as vitiating all titles acquired prior to the passing of that Act, unless the instruments on which they rest are registered under s. 100, but must be read as applying to instruments the — of which is optional under s. 18, but not as applying to instruments registered under s. 100.—10 W. R. 65.

And so a mortgage completed by possession, although not registered, was held to be good against a registered deed of sale which was executed after that Act came into operation.—22 W. R. 3.

But where plaintiff sued on an unregistered bond nearly 12 years after its execution and was met by an allegation of possession under a registered deed of sale by his mortgagor, the registered deed of sale was allowed to prevail over the unregistered bond with reference to s. 50.—19 W. R. 279.

55. A summary application under s. 53 Act XX of 1866 cannot be entertained at the suit of the assignee of the obligee.—10 W. R. 84.

56. The — in the talookdar's sherista of a ryottee tenure is not necessary under s. 27 Act X which applies to tenures intermediate between the zemindar and the cultivator.—10 W. R. 101. *See also* 11 W. R. 348.

57. The effect of s. 49 Act XX of 1866 is not to place a plaintiff in a worse position than one who has proved dispossession by a party who has no title to the land.—10 W. R. 102.

58. An unregistered contract of sale, though not absolutely needing — (according to s. 49 Act XX of 1866) to be admissible as evidence, cannot have priority over a subsequently executed and registered instrument.—10 W. R. 196. *See* 15 W. R. 239.

59. Where two parties claim the same property under registered deeds of sale, priority under s. 68 Act XVI of 1864 will date from the registered *kubala* and not from anterior possession under a parol contract of sale.—10 W. R. 231.

60. Where a Registrar refuses to register a deed of sale under s. 17 Act XVI of 1864, the applicant cannot sue the vendor to enforce — unless there is an express contract to register.—10 W. R. 313.

61. Where on a petition under s. 84 Act XX of 1866 a competent Court has decided that defendant was entitled to — of a *kubala*, plaintiff cannot sue to have it declared fictitious and void as against himself.—10 W. R. 329.

62. A lease providing for a *shon-ba-shon* or year-by-year tenancy is a lease for a term exceeding one year, and falls within cl. 4 s. 17 Act XX of 1866, and must, according to s. 49, be registered in order to be admissible in evidence.—10 W. R. 410.

But where a lease is for only one year, with option of renewal, it is only a one-year's lease and needs not —.—14 W. R. 68, 26 W. R. 98.

63. Acceptance of rent by the zemindar is a sufficient acknowledgment of the payer as tenant, so as to cure the defect of non —.—10 W. R. 466, 15 W. R. 211.

Also allowing payment of revenue by transferree.—18 W. R. 195.

64. Where a Registrar refuses to register an instrument, the remedy is by a petition to the Judge under s. 84 Act XX of 1866 and not by a regular suit to enforce —.—10 W. R. 483.

65. A Registrar can, under s. 95 Act XX of 1866, institute a prosecution for any offence under that Act.—10 W. R., Cr., 5.

66. The limitation by Act XXV of 1861 of the Magistrate's jurisdiction as to trial, applies only to the particular offences therein mentioned, and does not include within its scope any offence first created by Act XX of 1866.—10 W. R., Cr., 21.

67. Where a bond (specially registered under s. 52 Act XX of 1866) for money payable by instalments, contained a proviso that, in case of default, in payment of two successive instalments, the whole amount secured by the bond and remaining unpaid should become due, the whole amount remaining due on the bond cannot be recovered summarily under s. 53; these sections applying only to the two cases (1) where the full amount of the bond becomes payable, and (2) where an instalment becomes payable.—11 W. R., O. J., 24. *See also* 14 W. R. 277.

68. Where a lease is inadmissible as evidence because it is not registered, secondary evidence of its execution is not admissible.—11 W. R. 16.

69. A contract to pay money on a certain day with interest, wherein land is pledged as security, comes within the meaning of s. 52 Act XX of 1866 and may be summarily enforced.—11 W. R. 60.

70. Under s. 53 Act XX of 1866 the Court has no jurisdiction to give a decree declaratory of applicant's right to sell the property pledged in the obligation.—11 W. R. 222. *See* 14 W. R. 233.

Still less to make sureties liable, whose liability would only commence when that property and other properties belonging to the borrower had been fully proceeded against.—22 W. R. 28.

71. Under ss. 17 and 18 Act XX of 1866 all instruments of gift of immoveable property must be registered, whatever be the value of the property.—11 W. R. 334.

72. Non — cannot be pleaded for the first time in special appeal.—11 W. R. 381. *But see* 19 W. R. 22.

73. Where a man receives purchase-money under a contract which by law requires —, he virtually agrees to register and may be compelled to do so.—11 W. R. 398.

74. The decision of a Principal Sudder Ameen made after the passing of Act XX of 1866 upon a petition presented under Act XVI of 1864 must under s. 3 of the former Act have the same effect as if it had been passed upon a petition presented under that Act; and consequently under s. 55 no appeal lies to the Judge.—11 W. R. 417.

75. Where B personated A (who was unable by sickness to go herself) in registering a deed, B was held guilty, not of cheating by personation under s. 419 Penal Code, but of an offence under s. 93 Act XX of 1866.—11 W. R., Cr., 24.

76. Where an instrument creates a title or interest in land and is also a bond for money lent, it may under Act XX of 1866 be received in evidence as a document in a suit to recover the money lent, even if it be not registered; but without —, it is not admissible as evidence to prove that the obligee was entitled to the security of the land.—(F. B.) 12 W. R. F. B. 11. *See also* 12 W. R. 435. *See* 80 *post*.

77. A document giving or purporting to give a right to have immoveable property brought to sale with a view to the recovery out of its proceeds of money lent (principal and interest), is an instrument which creates an interest in immoveable property, and as such cannot, under s. 49 Act XX of 1866, be received in evidence without being registered.—12 W. R. 163.

78. A registered pottah was not allowed to prevail under s. 48 Act XX of 1866 against a parol agreement (or an earlier unregistered deed) under which possession of the thing to be transferred was given by the owner to the transferree.—12 W. R. 217. *See also* 14 W. R. 250; 20 W. R. 287; 25 W. R. 211.

The above principle was held not to extend to a case in which after such possession the claimant under the unregistered deed had been dispossessed by the opposite party.—21 W. R. 421.

79. Construction of "declaration" and "agreement" in s. 48 Act XX of 1866.—12 W. R. 217.

80. A *bye-bil-wuffa*, as a mortgage, must be registered under cl. 2 s. 17 Act XX of 1866; but as a covenant for the repayment of money lent, it does not require — but is admissible in evidence notwithstanding s. 49.—12 W. R. 222. *See* 12 W. R. 435.

REGISTRATION (*continued*).

81. Where defendants received a *mourosee* lease and an advance on account of *salamee* rent, and agreed that if they did not register the lease the whole amount was recoverable with interest, but failed to register it, and plaintiff took possession.—*Held* that plaintiff was entitled to recover the advance notwithstanding he took possession, but was liable to pay for the occupation of the land while in possession.—12 W. R. 287.

82. The — of a kubooleut for a building for a term exceeding a year is compulsory under cl. 4 s. 17 Act XX of 1866; but the party who retains and holds a building under an unregistered kubooleut, though not liable to be sued for rent under the kubooleut, is nevertheless bound to pay a reasonable compensation for the use and occupancy thereof.—12 W. R. 289. *See also* 15 W. R. 170.

83. S. 50 Act XX of 1866 has no application to a lease of a right to take the juice of date-trees, which is more a right to or benefit arising out of the standing trees or timber than a right or benefit to arise out of land coming under the description of immoveable property.—12 W. R. 366.

84. When — of a document has been refused because the execution of it is denied by one of those who are said to have executed it, and when a petition under s. 84 Act XX of 1866 is presented to the District Court by the party claiming under the document, in order to establish his right to have such document registered as having in fact been executed, the Judge must himself try the question whether the document was really executed or not, and has no jurisdiction to remand the case to the Sub-Registrar for the purpose of examining witnesses. Such petition is not an appeal from the decision of the Sub-Registrar or Registrar-General; the words "appealed against" in s. 84 meaning "complained of" or "objected to."—12 W. R. 385, 500. *See* 15 W. R. 487 and 108 *post*.

85. S. 53 Act XX of 1866 was held not to apply in a case, because (1) the suit had to be brought against the representatives of one of the original obligors, and (2) the suit was to enforce a lien upon surplus sale proceeds in deposit in the Collectorate.—13 W. R. 203.

86. The obligee of a bond specially registered is entitled under s. 53 Act XX of 1866 to a decree for the amount due, and the Court has no jurisdiction to alter the terms of the bond.—13 W. R. 252.

87. A Collector in Chota Nagpore cannot be compelled to register the name of any one as proprietor of an estate.—13 W. R. 397.

88. An instrument which was made at a time when Act XIX of 1843 was in operation, and was not required by that Act to be registered, and was a valid instrument conferring a right or interest on the parties in whose favor it was made, does not become invalid by reason of non — under the subsequent — Acts, nor is priority over it obtained by subsequent instruments registered under the latter Acts. —13 W. R. 446.

89. A lease for more than a year is not the less a lease requiring — before it can be used in evidence, because a condition is attached to the consideration, and because its term may be lessened on the payment of a sum of money by the lessor.—13 W. R. 468.

90. Where a charge is made before a Sub-Registrar that a document registered before him is a forgery, the Sub-Registrar should cause the complainant to proceed under s. 66 Act XX of 1866. If the Sub-Registrar is also a Deputy Magistrate, he cannot transfer the case to himself as Deputy Magistrate, but should prosecute under s. 95 for an offence under Act XX. In such cases there should be a formal charge drawn up against the accused, and the evidence must be taken in the presence of the accused.—13 W. R., Cr., 21.

91. The words "any deed, bond, contract, or other obligation" in cl. 7 s. 16 Act XVI of 1864, include a promissory note.—14 W. R., O. J., 51.

92. The refusal of one of the parties to a contract to carry out a verbal agreement to register a deed not contained in the contract, does not give the other party a right to put an end to the contract. His proper remedy is to enforce —.—14 W. R. 20.

93. S. 17 Act XX of 1866 does not provide for the — of a petition for a lease.—14 W. R. 178, 17 W. R. 509. *See also* 35 *ante*.

94. An order by an officer officiating for a Sub-Registrar refusing to register a document tendered to him for — is, by force of s. 83 Act XX of 1866, appealable to the Registrar-General.—14 W. R. 194.

95. Act XX of 1866 does not give any appeal against an order refusing to exercise the authority given by the first part of s. 32, neither does such an order fall under s. 83 or s. 82.—*Ib.*

96. Non — in the zemindar's sherista does not invalidate the sale of a tenure.—14 W. R. 210.

97. The Small Cause Court in Calcutta has no jurisdiction in cases of special — under ss. 52 and 53 Act XX of 1866. —14 W. R. 479.

But a Mofussil Small Cause Court has jurisdiction.—18 W. R. 199.

98. An admission before the Registrar of the receipt of purchase-money, as required by cl. 3 s. 66 Act XX of 1866, is only *primâ facie* evidence under s. 68.—15 W. R. 280. *See* (P. C.) 19 W. R. 149.

99. Where, in consideration of a loan, certain property was left in the hands of the lender for a term of years till the liquidation of the loan, the transaction was held to be not a lease but an usufructuary mortgage, the — of which, where the amount advanced was less than 100Rs., was optional under ss. 13 and 16 Act XVI of 1864.—15 W. R. 331.

100. S. 14 of the same Act contemplates cases in which no fixed or definite value is stated in the instrument creating the interest.—*Ib.*

101. When a bond pledges land for sums to be hereafter advanced not exceeding 100Rs., and the sums actually advanced exceed that amount, the bond becomes an instrument of which the — is compulsory under s. 17 Act XX of 1866. —15 W. R. 364.

102. Ss. 52 to 54 Act XX of 1866 contemplate bonds for the payment of money and none others.—15 W. R. 369.

103. A bond for the delivery of paddy without specification of its money value, or of the amount payable in case of non-delivery, cannot be summarily enforced under s. 53. —*Ib.*

104. The Judge is not bound, under s. 84 Act XX of 1866, to take evidence in all cases, even where he is satisfied as to the execution of the deed.—15 W. R. 487.

105. The mere — of a document does not decide the title of the parties, or prevent either party from bringing a suit to contest the fact of its execution.—*Ib.*

106. The necessity for — must be determined by the value of the consideration stated in the deed. Inadequacy of consideration can only be considered with reference to the *bona fides* of the transaction.—15 W. R. 558.

107. An instrument acknowledging payment of consideration-money for what was to be ultimately an absolute sale, is an instrument which, by s. 2 Act XX of 1866, requires —, and cannot be received in evidence under s. 49 if not registered.—(P. C.) 16 W. R., P. C., 26. *See also* 22 W. R. 309, (P. C.) 26 W. R. 50.

So also under s. 17 Act VIII of 1871.—20 W. R. 291.

So also under the latter section as to an instrument acknowledging receipt of consideration-money on account of extinction of interest in land; but oral evidence was held admissible in proof of the receipt of the money.—24 W. R. 328.

108. Where a person, alleged to have executed a deed, denies execution of it before the registering officer, the Zillah Judge, having regard to s. 84 and the form of petition given in the Schedule to Act XX of 1866, has jurisdiction to determine such a question.—(P. C.) *Ib.*

109. The mere circumstance of a bond not being registered is not sufficient *per se* to counterbalance the evidence, if it is generally satisfactory, in proof of the validity of the bond.—(P. C.) 16 W. R., P. C., 30.

110. S. 80 Act XX of 1866 does not empower the Registrar-General to pass a rule directing by what particular kind of evidence a person is to prove his right to have a deed registered.—16 W. R. 180.

111. Where all the executants of a deed admit before the Registrar-General that they have executed the deed, he has nothing to do with the recitals of the deed or with its possible operation as regards third parties.—*Ib.*

112. The representative, assign, or agent mentioned in s. 86 Act XX of 1866 means the representative, assign, or agent of one of the executants of the deed.—*Ib.*

REGISTRATION (*continued*).

113. S. 55 Act XX of 1866 is no bar to the jurisdiction of the Civil Courts in entertaining a suit for the enforcement of a lien on landed property mortgaged under a bond specially registered under that Act.—17 W. R. 154. *But see* (F. B.) 23 W. R. 187.

114. A suit for money lent under a bond registered under Act XVI of 1864, is not governed by the limitation prescribed by cl. 10 s. 1 Act XIV of 1859, but by that prescribed by s. 51 Act XX of 1866.—17 W. R. 345.

115. In a suit under s. 53 Act XX of 1866 to recover two instalments, one due more than a year previously, the Small Cause Court, concluding that the bond was not executed by defendant and was not properly registered, dismissed the suit. The High Court, on a reference, refused to allow the plaintiff to waive the first instalment, and alter the nature of his suit with a view to obtain a decree on the other instalment.—17 W. R. 514.

116. The proceedings of a Magistrate who tries prisoners charged with having committed offences under ss. 93 and 95 Act XX of 1866 are not illegal and without jurisdiction or otherwise bad merely because the prosecution was (with the sanction of the Registrar to whom he was subordinate) instituted against the accused by the same Magistrate in his official capacity of Sub-Registrar.—(F. B.) 17 W. R., Cr., 39: *See* 18 W. R., Cr., 15.

117. The — of a lease is no proof of its genuineness, especially where produced nearly 9 years after execution, and alleged to have been executed by a *purdanusheen* lady without satisfactory evidence that she put her hand and seal to it and with a knowledge of the nature and contents of the instrument.—18 W. R. 238.

118. There is nothing in the — Act which renders a parol contract between Hindoos invalid or inoperative.—18 W. R. 293.

119. *Quære.* Whether a plaintiff can rely upon a document not registered as it ought to have been, and therefore not admissible in evidence under the — Act.—18 W. R. 329.

120. Where defendant, after drawing up and signing a *kubala*, delivered it to plaintiff's servant, and afterwards took it away and it was never registered,—*Held* that plaintiff had a right to have the deed restored and the sale declared good, and that his suit was not barred by the — Act; also that a subsequent registered *mokurruree* lease could not prevail against such unregistered *kubala*, and that even were the mokurrureedar's suit to be separately tried, time would probably be allowed for the — of the *kubala*, in order to its being admitted as evidence.—18 W. R. 504. *But see* 24 W. R. 320.

121. Before — of a sale of a portion of a tenure can be obtained under s. 27 Act X (not s. 26 Act VI of 1862 B. C., as incorrectly mentioned in the judgment), plaintiff must show that the tenure was a "permanent transferable one" and that the sale did not involve any redistribution of the rents.—18 W. R. 507.

122. A zemindar is not bound to recognize the transfer of a *surburakaree* (a permanent hereditable tenure) effected without his consent, and cannot be compelled to register such transfer in his sherista; but the fact of such improper transfer does not deprive the old surburakar of his rights or entitle the zemindar to get *khas* possession.—19 W. R. 99.

123. Where plaintiff had elected to bring a regular suit in the Moonsiff's Court for the recovery of the amount due under a bond and for declaration of his lien on the property pledged thereby, the Judge was held to have acted without warrant in converting the plaint into an application under s. 53 Act XX of 1866.—19 W. R. 156.

124. Under s. 36 Act XX of 1866, on the registering officer enquiring whether or not the document was executed by the person by whom it purports to have been executed, if such person admits the execution of the document, the plain duty of the registering officer is to register the document whether the executant asks or consents to it or not.—19 W. R. 198.

125. In a decree based upon a mortgage-bond and passed under s. 53 Act XX of 1866, the Court cannot confer a lien in accordance with the bond.—19 W. R. 251.

126. A *sebaitnamah* which conveys no right or interest, but merely declares that a particular portion of the *thakoor's* income shall be expended through the instrumentality of the *sebait* in the worship of the *thakoor*, is not a deed requiring — under s. 13 Act XVI of 1864.—19 W. R. 291.

127. The non — of a decree cannot be a reason why the decree should not be executed.—20 W. R. 19.

128. An unregistered kubooleut is not inadmissible as evidence if it was executed at a time when the law did not require —.—20 W. R. 83.

129. A suit for a refund and damages on the ground of defendant's refusal to allow a pottah, for which a kubooleut had been given, to be registered, is brought not upon the pottah and kubooleut, but upon an implied contract by defendant to do that which was necessary to give effect to his own pottah; and the question is whether plaintiffs have done all they were required to do to entitle them to the assent of the defendant to —.—20 W. R. 107.

130. Where a pottah has been executed and handed over, if it specifies no pre-requisite conditions to —, the presumption is that no such conditions exist.—*Ib.*

But the — of a kubooleut is, under s. 68 Act XX of 1866, *primâ facie* proof of the truth of its contents.—25 W. R. 267.

131. Where a zemindar refuses to register a transfer on the application of a purchaser, the latter's cause of action arises from the time of such refusal, and not from the time when his title accrued by his purchase.—20 W. R. 125.

132. A document acknowledging the repayment of consideration-money advanced upon a mortgage is not required by cl. 3 s. 17 Act XX of 1866 to be registered, neither can it be treated as an instrument which purports or operates to limit or extinguish any right, title, or interest to or in immoveable property within the scope of cl. 2. Such a document is admissible as evidence without —.—20 W. R. 334.

133. The circumstance that a copy of a document has been obtained from the office of a Registrar of Deeds does not make that registered document evidence, or render it operative against the persons who appear to be affected by its terms.—21 W. R. 265.

134. Where certain letters were held not to require —, as not amounting to a lease or an agreement for a lease, but as being evidence of a contract of a special character not coming within any of the definitions of the — Act.—(P. C.) 21 W. R. 315.

135. Where parties applying for — of name in the Collector's books are successfully opposed by others claiming on the ground of a conveyance made to themselves, such opposition is a good cause of action to the former if they have the right of title they allege.—22 W. R. 9.

136. In setting up an unregistered title against a registered title, it is necessary to show that the transaction relied on was a genuine one, complete in every respect, and was followed by peaceful possession before the passing of the — Act.—22 W. R. 12.

137. Where a document is executed by one of two parties on behalf of himself and the other, it is sufficient for the purposes of s. 34 Act VIII of 1871 that the person executing it appear before the registering officer; the other party is not required to appear.—(O. J.) 22 W. R. 68.

138. Where the executants of a *kubala* omitted to have it registered and the property was sold to a third party who took it *bonâ fide* for valuable consideration, the remedy of the party in whose favor the *kubala* was executed as against the executants was held to be not in a suit for specific performance but in an action for damages.—22 W. R. 164.

139. The — of a document under Act XX of 1866 is complete when all the requirements of ss. 66, 67, 68, and 69 have been fulfilled, and the certificate mentioned in s. 68 is *primâ facie* evidence of such completeness.—22 W. R. 319.

140. Where a *kubala* bore the above certificate, a memorandum from the Sub-Registrar stating that he was not satisfied that the heirship of the party conveying had been established, was held in no way to affect the —.—*Ib.*

141. Where the requirements of the law had been fulfilled, a report made by the Sub-Registrar expressing his intention to reject the document, was held not to affect its claim to being a well-registered document within the meaning of s. 49.—*Ib.*

142. A decree which directs the sale of mortgaged property is rendered invalid by the fact of the mortgage not having been registered as required by Act XVI of 1864.—22 W. R. 354.

143. When a vendee has got not a mere contract to convey, but a conveyance, *i.e.* a document which in terms professes to make over the property, and the document is

REGISTRATION (*continued*).

registered (in case — be necessary), he becomes the owner without further ceremony.—23 W. R. 131.

144. A creditor who has resorted to the summary procedure provided by s. 53 Act XX of 1866 and has recovered a portion of his claim in execution of the decree so obtained, is not at liberty, under s. 2 Act VIII of 1859, to bring a regular suit against the same parties for the enforcement of his remedies under the bond; but there may be a right of suit remaining against third persons not parties to the first proceedings.—(F. B.) 23 W. R. 187. *See also* 23 W. R. 344.

145. An enquiry made by the Clerk of a Registry Office, with a view to ascertain whether the person who brings a receipt to take back a document which could not be returned in the first instance and for which a receipt was accordingly given, is the person in whose possession the receipt ought to be, is an enquiry within the meaning of s. 80 Act VIII of 1871.—23 W. R., Cr., 55.

146. The High Court N. W. P., having no ordinary original civil jurisdiction, is not competent, under s. 88 Act XX of 1866, to direct the — of a deed the — of which has been refused by the Registrar and the Registrar-General.—(P. C.) 24 W. R. 75.

147. Where a deed of sale is presented for — within the period required by s. 22 and is accepted by the registering officer, who, without the vendors appearing, registers it by a mistake, and the — is declared by a competent Court to be invalid, the registering officer may, although the period of 4 months has expired, proceed to compel the appearance of the vendors, and on their admission register the deed.—(P. C.) *Ib.*

148. Such — may be effected by the registering officer voluntarily and without an order from the District Court under s. 84, notwithstanding that an application by the parties concerned to have it registered has been refused by the Registrar, and that the Registrar-General has deemed the first (invalid) — to be due —.—(P. C.) *Ib.*

149. Every — of a deed is not null and void by reason of a non-compliance with the provisions of ss. 19, 21, or 36 or other similar provisions; such errors or defects should be classed under the general words "defect in procedure" in s. 88.—(P. C.) *Ib.*

150. A registered document, the — of which was compulsory, cannot be regarded as having effect against a prior unregistered document the — of which was optional. —(*Adopting* 2 H. C. Rep., N. W. P. 37) 24 W. R. 121.

151. A deed sued on, not having been registered, was held not to operate as a mortgage lien upon the property.—25 W. R. 110.

152. The—of a *salehnamah* whereby it was agreed to have a deed of partition drawn up in a particular form (viz. in the shape of an arbitration award) is optional.—25 W. R. 376.

153. The District Courts mentioned in Act VIII of 1871 must be taken to be the ordinary Zillah Courts over which the High Court has power of superintendence.—(P. C.) 26 W. R. 50.

See Ancestral Property 18.
Appeal 149, 152.
Auction-Purchaser (Execution Sale) 21.
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Chakeran Land 1, 2.
Contempt of Court 11.
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Declaratory Decree 16, 20, 94.
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Ejectment 38, 69.
Enhancement 80, 283.
Equitable Mortgage 1.
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,, (Documentary) 116.
,, (Estoppel) 6, 18, 26, 108.
False Evidence 21.
Forgery 22.
Hindoo Law (Adoption) 18, 26, 66.
,, Widow 98.
Imprisonment 8.
See Interest 64, 80, 108.
Intervenor 78.
Joinder of Parties 18.
Jurisdiction 207, 231, 241, 286, 512.
Lakheraj 11.
Landlord and Tenant 36, 51.
Limitation 4, 147, 200.
,, (Act XIV of 1859) 36, 194, 267, 278.
,, (Act IX of 1871) 80.
Lis Pendens 8.
Middlemen 2.
Misjoinder 8.
Mortgage 117, 129, 241, 288, 294.
Moveable Property 4.
Occupancy 28.
Partition (Butwarra) 1.
Plaint 13, 22, 24.
Practice (Appeal) 70.
,, (Attachment) 48.
,, (Criminal Trials) 8, 9.
,, (Parties) 4.
,, (Review) 95, 105.
Pre-emption 58.
Privy Council 42, 58.
Public Servant 4.
Purdah-women 2.
Putnee Talook 11, 12, 28, 60, 71, 83, 84, 85, 93, 111.
Re-entry 4.
Relinquishment 14.
Rent 60, 61, 83.
Sale 101, 193, 202.
,, Law (Act XI of 1859) 4, 34.
Settlement 6.
Sub-talook 1.
Transferable Tenure 8.
Under Tenures 1, 5.
Vendor and Purchaser 15, 18, 47, 53, 75.
Will 25.

Regulation I of 1793.

s. 8 cl. 4. *See* Ghatwals 7.
See Jagheers 2.

Regulation III of 1793.

s. 13. *See* Gift 18.
s. 14. *See* Limitation (Reg. III of 1793 s. 14).
Mesne Profits 2.
s. 15. *See* Bond 4.
s. 16. *See* Res Judicata 19.
See Limitation (Reg. III of 1793 s. 14) 4, *5a*.

Regulation IV of 1793.

s. 5. *See* Practice (Suit) 9.
s. 25. *See* Jurisdiction 291.

Regulation VI of 1793.

s. 16. *See* Partnership 8.

Regulation VIII of 1793.

s. 5. *See* Enhancement 17, 246, 256.
s. 8. *See* Junglebooree Tenure 1, 2.

REGULATION VIII OF 1798 (*continued*).

s. 7. *See* Enhancement 256.
s. 41. *See* Chakeran Land 3, 6.
s. 48. *See* Under-Tenures 1.
s. 49. *See* Enhancement 54, 115, 165.
s. 51. *See* Churs 49.
Enhancement 54, 91, 110, 115, 128, 135, 140, 238, 242, 252, 256, 270, 277, 289.
Limitation (Act X of 1859) 28.
Onus Probandi 20.
Under Tenures 1.
s. 54. *See* Cesses 4.

Regulation X of 1793.

s. 10. *See* Jurisdiction 255.
See Court of Wards 5.

Regulation XI of 1793.

See Primogeniture 1.

Regulation XIV of 1793.

See Sale Law 1.

Regulation XV of 1793.

s. 6. *See* Bond 5.
Interest 45, 50, 57.
s. 7. *See* Mortgage 247.
s. 9. *See* ,, 9.
Zur-i-peshgee Lease 4.
s. 10. *See* Mortgage 9, 51, 209.
Zur-i-peshgee Lease 4.
s. 11. *See* Mortgage 5, 26.
See Mortgage 11, 28, 289.

Regulation XIX of 1793.

s. 6. *See* Ejectment 48.
Limitation 15.
Resumption 25.
s. 9. *See* Kubooleut 58.
s. 10. *See* Ejectment 5.
Jurisdiction 33, 60.
Lakheraj 4, 10, 21, 22, 27.
Limitation 15, 100, 101, 140.
,, (Act XIV of 1859) 79.
Onus Probandi 9, 19, 87.
Rent 84.
Resumption 6, 8.
s. 19. *See* Partition (Butwarra) 21.
See Lakheraj 30.
Onus Probandi 36.
Resumption 14.

Regulation XX of 1793.

See Sale 28.

Regulation XXVI of 1793.

s. 2. *See* Majority 5, 9.
s. 3. *See* ,, 7.
See Majority 1.

Regulation XXVII of 1793.

s. 5. *See* Market 2.

Regulation XXXVII of 1793

s. 20. *See* Registration 9.

Regulation XLIV of 1793.

s. 5. *See* Sale Law 7, 8.
s. 7. *See* ,, ,, 7, 8.

Regulation XLV of 1793.

s. 2. *See* Limitation (Act XIV of 1859) 243.

Regulation XLVIII of 1793.

cl. 2 s. 24. *See* Mutation of Names 1.

Regulation XI of 1796.

See Forfeiture 10, 12, 13.

Regulation XVI of 1797.

s. 4. *See* Privy Council 20, 25, 26, 31, 33, 34, 37, 45, 65.

Regulation I of 1798.

s. 2. *See* Mortgage 64.
s. 3. *See* ,, 154.
s. 5. *See* ,, 266.
See Appeal 194.
Mortgage 11, 56, 157, 227, 266.

Regulation VII of 1799.

s. 15. *See* Sale Law 10.
cl. 7. Ejectment 34.
Sale 97.
s. 25. *See* ,, 151.
See High Court 59.
Limitation 123, 166*a*.
,, (Act XIV of 1859) 295.
Rent 19, 44.
Sale 98.
,, Law 1.
Summary Award for Rent 7.

Regulation VIII of 1800.

See Evidence (Documentary) 54.

Regulation I of 1800 (Bombay Code).

s. 13. *See* Limitation 70.

Regulation II of 1800 (Bombay Code).

s. 7. *See* Costs 28.

Regulation II of 1802 (Madras Code).

s. 18. cl. 4. *See* Limitation 76.

Regulation XXV of 1802 (Madras Code).

s. 8. *See* Lease 21.
See Settlement 27.

Regulation II of 1803.

s. 18. *See* Limitation (Reg. II of 1805) 6.
cl. 3. „ 74, 75.

Regulation LII of 1803.

See Court of Wards 5.

Regulation I of 1804.

See Jagheers 2.

Regulation II of 1805.

s. 2. *See* Limitation (Reg. II of 1805) 8.
cl. 2. Resumption 10.
s. 3. cl. 1. *See* Limitation (Reg. II of 1805) 9.
cl. 2. „ („ „ „) 1, 2.
cl. 3. „ („ „ „) 5, 8.
cl. 4. „ („ „ „) 5.
Securities (Government) 1.
See Limitation (Reg. II of 1805) 4, 6.

Regulation VIII of 1805.

See Sale Law 10.

Regulation XII of 1805.

s. 34. *See* Jagheers 1.

Regulation II of 1806.

s. 4. *See* Principal and Surety 2.
See Lease 22.
Practice (Attachment) 17*a*, 27, 29.

Regulation XVII of 1806.

s. 7. *See* Mortgage 27, 182, 221.
s. 8. *See* „ 45, 47, 141, 144, 156, 191, 192, 220, 221, 227, 265.
See Mortgage 7, 28, 39, 56, 58, 82, 149, 157, 164, 227, 284.
Onus Probandi 104.

Regulation XIX of 1810.

See Endowment 7.

Regulation V of 1812.

s. 3. *See* Rent 99.
s. 26. *See* Appeal 195.
High Court 58.
Jurisdiction 460.
Land Dispute 39.
Practice (Attachment) 68, 69.
See Appeal 100.
Enhancement 60.
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Notice 1, 10.
See Rent 3.
Res Judicata 8.
Sale Law 8.

Regulation XIV of 1812.

s. 2. *See* Lease 59.

Regulation XX of 1812.

s. 5. *See* Limitation 158.
Registration 20.

Regulation VI of 1813.

s. 8. cl. 3. *See* Arbitration 38.

Regulation XIX of 1814.

s. 3. *See* Partition (Butwarra) 33.
s. 4. *See* „ „ 27.
s. 5. *See* Jurisdiction 489.
s. 9. *See* „ 329.
Partition (Butwarra) 19.
s. 20. *See* „ „ 3, 8, 23.
s. 30. *See* „ „ 12.
See Contribution 10.
False Evidence 40.
Mortgage 273.
Partition 19.
„ (Butwarra) 13, 28, 34, 38.
Sale Law (Act XI of 1859) 28.

Regulation XXVI of 1814.

See Practice (Review) 54.
Res Judicata 50.

Regulation XXVII of 1814.

s. 25. *See* Costs 52.

Regulation XXIX of 1814.

s. 2. *See* Ghatwals 1.
s. 4. *See* Land taken for Public Purposes 26.
s. 5. *See* Ghatwals 2.

Regulation XI of 1816.

s. 8. *See* Attgurh Raj 2.

Regulation XV of 1816 (Madras Code).

See Practice (Possession) 14.

Regulation V of 1817.

s. 2. *See* Hidden Treasure 1.
s. 6. *See* „ „ 1.
s. 8. *See* „ „ 2.
See Hidden Treasure 3.

Regulation XX of 1817.

s. 10. *See* Zemindaree Dak 1.
s. 21. *See* Limitation (Act XIV of 1859) 300.
Village Chowkeedar 1.

Regulation II of 1819.

s. 16. *See* Resumption 31.
s. 24. *See* ,, 4.
s. 30. *See* Jurisdiction 6, 32, 68, 155, 177.
Kubooleut 58.
Lakheraj 1, 2, 7, 12, 13.
Limitation 6, 15, 101.
Res Judicata 22.
Resumption 11.
See Julkur 8.
Lakheraj 35.
Limitation (Act XIV of 1859) 12.
Onus Probandi 87.
Practice (Possession) 22.
Resumption 5, 9, 10, 17.
Settlement 13, 22.

Regulation VI of 1819.

s. 3. *See* Jurisdiction 251.
s. 4. *See* Ferry 3.
s. 13 cl. 2. *See* Ferry 3.

Regulation VIII of 1819.

s. 2. *See* Putnee Talook 16.
s. 5. *See* ,, ,, 101.
s. 6. *See* Appeal 103.
Putnee Talook 28.
s. 7. *See* ,, ,, 101.
s. 8. *See* Sale 208.
,, cl. 2. *See* Putnee Talook 34, 108.
Sale 121, 130, 176, 227.
,, cl. 3. *See* Putnee Talook 87.
s. 11. *See* Sale 208.
,, cl. 1. *See* Under Tenures 12.
,, cl. 2. *See* Putnee Talook 1, 53.
s. 13. *See* Putnee Talook 56, 116.
,, cl. 4. *See* Sale Law 17.
s. 14. cl. 1. *See* Putnee Talook 28.
s. 17. cl. 3. *See* ,, ,, 9.
,, cl. 5. *See* Limitation (Act XIV of 1859) 76.
,, cl. 6. *See* Putnee Talook 105.
s. 18. *See* Cause of Action 9.
Limitation 123.
Summary Award for Rent 1*a*.
See Howala 2.
Kubooleut 15.
Landlord and Tenant 4.
Limitation (Act XIV of 1859) 20, 240.
Practice (Attachment) 3.
Putnee Talook.
Sale 97, 183, 196, 228.

Regulation X of 1819.

s. 91. *See* Salt 2.

Regulation I of 1820.

See Sale 208.

Regulation VII of 1822.

s. 7. *See* Enhancement 259.
Special Appeal 45.
s. 9. *See* Enhancement 181, 259.
Khas Mehals 3.
Limitation 188.
,, (Act XIV of 1859) 208, 212, 213.
Rent 106.
Shikmee 4.
s. 15. *See* Right to sue 11.
See Limitation (Act XIII of 1848) 13.
Partition (Butwarra) 14.

Regulation X of 1822.

See Jurisdiction 191.

Regulation XI of 1822.

s. 32. *See* Ejectment 75.
See Auction-Purchaser (Revenue Sale) 14.
Ejectment 75.
Enhancement 136.
Sale Law 11, 12.

Regulation VI of 1823.

s. 8. *See* Indigo 20.

Regulation I of 1824.

s. 9 cl. 11. *See* Salt 7.
s. 14. *See* Salt 8.
See Embankment 2.
Land taken for Public Purposes 1.
Salt 6.

Regulation VII of 1825.

s. 7. *See* Practice (Attachment) 64.
Sale 45, 46, 132, 183.

Regulation IX of 1825.

See Limitation (Act XIV of 1859) 212, 213.
Resumption 4.

Regulation XI of 1825.

s. 2. *See* Churs 57.
s. 4. *See* ,, 3, 62.
,, cl. 1. *See* Churs 5, 7, 9, 26, 30, 31, 35, 36, 48, 63, 64, 66, 80.
,, cl. 2. *See* ,, 12, 26, 31.
,, ,, Settlement 9.
,, cl. 3. *See* Churs 5, 14, 25, 26, 31, 32, 41, 59, 63, 67.
,, cl. 4. *See* ,, 35, 64, 80.
s. 5. *See* Churs 26.
See Churs 6, 8, 16, 31, 37, 50, 60, 65, 69, 74.
Water 3, 7.

Regulation XIV of 1825.

See Onus Probandi 36.

Regulation XX of 1825.

See Commitment 11.

Regulation V of 1827.

s. 3. *See* Appeal 195.
Jurisdiction 356.

See High Court 53.
Land Dispute 39.
Practice (Attachment) 63, 68, 69.

Regulation IV of 1827 (Bombay Code).

s. 27 cl. 1. *See* Family Custom 4.

Regulation V of 1827 (Bombay Code).

s. 4. *See* Limitation 71.
s. 7 cl. 2. *See* Limitation 72.

Regulation XVII of 1827 (Bombay Code).

See Farmer 3.

Regulation III of 1828.

s. 13 cl. 2. *See* Limitation 23.

See Cause of Action 10.
Ghatwals 8.
Practice (Possession) 22.
,, (Review) 15.
Resumption 17.

Regulation XXVIII of 1828.

s. 11. *See* Mokurruree Tenure 1.

Regulation VIII of 1831.

s. 4. *See* Summary Award for Rent 7.
s. 6. *See* ,, ,, ,, 4.

Regulation IV of 1831 (Madras Code).

See Enam Grants 2.

Regulation VII of 1832.

s. 9. *See* Marriage 15.

Regulation IX of 1833.

s. 9. *See* Survey 10.

Regulation XIII of 1833.

See Jurisdiction 2.

Re-hearing.

1. The reasons for rejecting under s. 347 Act VIII an application for the — of an appeal dismissed for default of prosecution should be stated in the order itself.—2 W. R. 251.

And the Judge is bound to see whether they are satisfactory or not.—15 W. R. 80.

1*a*. Satisfactory proof of service of summons is necessary before the rejection, under s. 58 Act X of 1859, of an application for — by a party against whom a decree was passed *ex-parte*.—2 W. R., Mis., 24.

2. An application for the — of a case decreed *ex-parte* may be made at any time before the enforcement of any process for execution of the decree.—4 W. R. (Act X) 3.

3. A Judge has no authority to order a Deputy Collector to determine whether there are grounds for admitting to a — a case which had been decreed *ex-parte* by the Appellate Court. S. 58 Act X applies to Courts of first instances and not to Appellate Courts.—11 W. R. 108.

4. Where a judgment-debtor in a rent-suit applies for a — on the ground that notice was not served in the first instance, the Court must first enquire whether the application for — has been made in time.—11 W. R. 310.

5. S. 103 Act VIII of 1869 (B. C.) applies only to reviews and not to applications for a — where decisions have been passed *ex-parte*. Cases of the latter description are governed, under s. 34 of the above Act, by s. 119 Act VIII of 1859.—16 W. R. 17.

6. In any case in which judgment was passed *ex-parte* or by default by the Revenue Courts before the passing of Act III of 1870 (B. C.), the application for the — of the case is governed by the procedure prescribed by s. 119 Act VIII, and not s. 58 Act X.—18 W. R. 207.

7. Everything done in such a case by the Revenue Court since the passing of Act III of 1870, and the order of the Judge remanding the case to the Revenue Court for —, were set aside as altogether without jurisdiction.—18 W. R. 252.

8. An application for — on the ground that applicant had no notice of the suit is not barred by the institution of an appeal and special appeal.—*Ib.*

See Appeal 103, 179.
Certificate 120.
Default 14.
Ex-parte Judgment or Decree 1, 5, 6.
High Court 136.
Jurisdiction 351, 412.
Practice (Appeal) 3, 61.
,, (Execution of Decree) 159.
Remand 17, 49.
Special Appeal 31.
Summons 21.

Re-imbursement.

See Auction-Purchaser (Execution Sale) 20.
Contribution.
Dur-ijara 2.
Limitation 95.
Sale Law (Act XI of 1859) 8.

Release.

1. A — of a debt by one of several executors is binding on the rest.—Sev. 48.

2. Where a general — was held not to operate as a — of all demands.—(P. C.) 5 W. R., P. C., 112 (P. C. R. 40).

3. A private settlement with or — given to any of several debtors will not justify a judgment-creditor in requiring from the remaining debtors an account of the share or shares so settled or exempted.—2 W. R., Mis., 15.

See Adjustment 4.
Appeal 121, 197.
Assignment 5.
Attached Property 19, 20, 33, 45, 47, 48.
Auction-Purchaser (Execution Sale) 44.
Certificate 83.
Contribution 5, 20.
Endowment 2.
High Court 142, 154.
Hoondee 17.
Injunction 11.
Jurisdiction 288, 339.
Limitation (Act XIV of 1859) 174, 199.
,, (Act IX of 1871) 44.
Manager 11.
Onus Probandi 29.
Practice (Appeal) 45.
,, (Execution of Decree) 195, 258, 276.

RELEASE (*continued*).

See Privy Council 70, 71.
Resumption 28.
Sale 168.

Religion.

Change of — does not involve forfeiture of inheritance. —*See* Manager 2; Marriage 15.

See British Subject 1.
Christian.
Hindoo.
„ Law.
„ „ (Adoption).
„ „ (Alienation).
„ „ (Coparcenary).
„ „ (Inheritance and Succession).
„ „ (Migration).
„ „ (Religious Ceremonies).
„ „ (Sale).
„ Widow.
Jujmans.
Jurisdiction 496.
Mahomedan.
„ Law.
Marriage 84.
Minor 82, 84.
Partition 18*a*.
Public Policy 4.
Purohit.
Purohitam.
Religious Ceremonies.
„ Endowment.
Roman Catholic.
Temple.

Religious Ceremonies.

See Hindoo Law (Religious Ceremonies).
Jurisdiction 123, 124.
Ruth Jattra.

Religious Endowment.

See Endowment.
Hindoo Law (Religious Ceremonies).

Relinquishment.

1. Where, in a former suit to set aside the sale of a tenure, plaintiff, in specifying the lands subject to that tenure, excluded a portion (once included) as having been by a Survey award included in the adjacent talook, such exclusion is not a — within the meaning of s. 7 Act VIII of 1859.—W. R. Sp. 184.

2. A voluntary abandonment of a permanent and transferable tenure is tantamount to an express — without the right to reclaim.—W. R. Sp. 270. *See also* 12 W. R. 304 and 9 *post*.

3. Mere notice of —, without actual —, cannot protect from liability for rent.—1 W. R. 20 (3 R. J. P. J. 142), 11 W. R. 456.

4. According to Hindoo law, a widow in possession can relinquish and thus anticipate for the reversioners their period of succession. A — in favor of second reversioners is also valid if made with the consent of the first reversioners.—1 W. R. 98.

5. Issues arising from a — by one brother of property held jointly by two.—1 W. R. 325.

6. Where a ryot left his lands and made no provision for their management or for the payment of his rents, and the zemindar put in another ryot, it was held that no action would lie against the new ryot for mesne profits, nor for possession in the absence of the zemindar.—2 W. R. 137.

7. The rights of a tenant cannot be destroyed by the — of rights by the purchaser from a putteedar from whom the tenant held by pottah.—4 W. R. 76.

8. A ryot who has taken a lease in writing for a term of years, cannot, under s. 19 Act X, throw it up during its currency.—5 W. R. (Act X) 81, 9 W. R. 89.

9. When a cultivating ryot goes away from the land which he has occupied, and neither cultivates nor pays rent for it, he has wholly relinquished the land. The — need not be in writing.—6 W. R. 67, 7 W. R. 153, 21 W. R. 344. *But see* 18 W. R. 41.

10. A suit for the — of a lease on the ground of fraud is only cognizable by a Civil Court. A Revenue Court can only take notice of a — when made under s. 19 Act X.—7 W. R. 62.

11. S. 19 does not make it imperative on a ryot to apply to the Collector for service of notice of — of land. Non-service of notice by the Collector does not affect his rights, if actual notice was given to landlord or agent within the time mentioned.—8 W. R. 220.

12. Where tenant has taken steps for an intended — of land, landlord must prove continued possession notwithstanding; but where such steps have not been taken, tenant must prove that landlord took possession and enjoyed profits.—*Ib.*

13. A perpetual contract by a lessee for his heirs, reciting that they shall never relinquish the jote, cannot operate against s. 19 Act X, which says that any ryot may relinquish his jote if he does so in a legal manner.—9 W. R. 89.

14. The — of a lease by the managing member of a joint Hindoo family, who has been registered as such in the zemindar's sherista, is not sufficient in law to authorize the zemindar to make new arrangements with others.—9 W. R. 268.

15. A mere petition by a widow to the effect that she has relinquished her title in favor of others is not a legal —. -10 W. R. 98. *But see* 18 W. R. 271.

16. The neglect of a ryot to give written notice of — under s. 19 Act X was held condoned by the act of the zemindar in granting leases of the same land to other ryots.—11 W. R. 53.

17. Whether a particular claim arising out of the same cause of action is relinquished voluntarily or otherwise (*e.g.* by mistake), the result would be the same, and a second suit for that claim would be barred by s. 7 Act VIII. —8 W. R., P. C., 3; 12 W. R. 79.

18. There is no difference between the position of a Rajah holding an impartible raj and that of an ordinary zemindar in respect of his power to relinquish the property in favor of his next legal heir. Such a — is not forbidden by the Hindoo law.—14 W. R. 197.

19. When the effect of such a — is to give the property entirely into the hands of the son, he can during his father's lifetime question and challenge any acts done or alleged to have been done although denied by the father.—*Ib.*

20. Where a plaintiff asks for the establishment of two inconsistent rights, before he can obtain a decree for one of them, the other must in some way be relinquished or abandoned, the election being clear and distinct.—16 W. R. 198. *But see* 20 W. R. 91.

21. The privilege given in s. 7 Act VIII to a plaintiff to abandon the excess of a claim applies also to a case where a party comes in with an application to cause an arbitration award to be filed.—20 W. R. 56.

22. The consequence of not suing for the whole of a claim, as required by s. 7 Act VIII of 1859, is not that the suit cannot be entertained for so much as the plaintiff sues for, but that he cannot afterwards sue for what he has omitted.—21 W. R. 272.

23. Where a separation takes places in a joint Hindoo family, and one member becomes the owner of a *khas* share, being a portion of land with a house which (after living in it for some time) he eventually abandons, the zemindar is entitled to deal with it in the same way as he is entitled by law to deal with the abandoned holding of a cultivating ryot.—21 W. R. 39.

24. The mere use of the words *oncoké bili korō* in conversation by the tenant, when called upon by the zemindar to

RELINQUISHMENT (*continued*).

pay increased rent, was held insufficient to constitute a —, where there was no acceptance of the —, and not even any verbal notice to quit given to the tenant.—21 W. R. 118.

See Cause of Action 22.
Compromise 8.
Court of Wards 1.
Declaratory Decree 46.
Endowment 11.
Enhancement 288.
Gift 19, 21.
Hindoo Law (Inheritance and Succession) 107.
,, Widow 5, 59.
Instalments 14.
Interest 54.
Joinder of Parties 36.
Lease 36, 46.
Limitation 136.
,, (Act XIV of 1859) 253.
Notice 5, 24.
Onus Probandi 220, 243, 269.
Partnership 80.
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Practice (Possession) 6.
Putnee Talook 104.
Rent 56, 63.
Resignation.
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Splitting Cause of Action.
Surrender.

Remand.

1. A Judge on appeal in a suit to open roads leading to a kotee, expressing an opinion that the facts had not been sufficiently ascertained, directed a further local enquiry to be made, and remanded the case to the Lower Court to be again decided there after such local enquiry. *Held* that he had no authority, upon such a ground, to — the case for re-decision, there being no suggestion, under s. 351 Act VIII of 1859, that the Lower Court had erroneously decided a preliminary point excluding evidence, and the reference not being of an issue framed by the Appellate Court under s. 354.—1 Hay 260 (Marshall 121).

2. A case was remanded because it was tried two days before the day fixed for the attendance of the defendant's witnesses.—1 Hay 443.

3. Where the subject-matter of a fresh appeal raised precisely the same question which had been finally determined by the — order of the Sudder Court, the High Court held such question to be no longer open to discussion.—2 Hay 125.

4. A case cannot be remanded to the Lower Court to try an issue which was not raised there by the party applying for the —.—Sev. 29. *But see* 10 W. R. 491.

5. When the decision of the first Court is on a preliminary point, the Lower Appellate Court cannot — the suit, but must retain it on its file and send the record to the first Court to take the necessary evidence.—W. R. Sp. 296 (L. R. 80).

6. S. 351 Act VIII of 1859 applies where a Lower Court has disposed of a case on a preliminary point. Where much evidence has been taken, and the Lower Appellate Court thinks further enquiry necessary, it should not — the case, but frame an issue for trial by the Lower Court under s. 354.—W. R. Sp. 357 (L. R. 131), 25 W. R. 284. *See* 14 W. R. 380.

7. In an appeal from an order of a Court dismissing a suit on the ground of limitation, the Lower Appellate Court, if there be sufficient evidence, instead of remanding it, should try it on its merits as prescribed in s. 353 Act VIII of 1859; but if further evidence be required, should follow the rule laid down in s. 354.—W. R. Sp. 361. *See* 15 W. R. 314.

The Lower Appellate Court, if it be of opinion that the first Court has omitted to try certain issues, should instead of reversing the decision of the latter Court, send the case back under s. 354 for the trial of those issues.—24 W. R. 137, 25 W. R. 47.

8. An Appellate Court is not competent to — a case for retrial after a local investigation.—W. R. Sp. 363 (L. R. 136).

9. Such an order is in effect a decretal order from which an appeal will lie.—*Ib.*

10. An Appellate Court should not — a case for additional evidence but should take such evidence itself.—W. R. Sp. (Act X) 95 (3 R. J. P. J. 26). *See also* 25 W. R. 35.

11. There is no appeal from the order of a Lower Appellate Court remanding a case a second time, on the ground that the former order of — had not been carried out.—W. R. Sp., Mis., 39.

12. A Lower Appellate Court, in remanding a case a second time, ought not to confine itself to a vague general remark that its previous order had not been carried into effect, but should also state what the main requirements of such order were and how they had not been carried out.—*Ib.*

13. Where the Lower Court, having found the suit barred by limitation, went into the case and dismissed it on the merits, it was not necessary for the Appellate Court, in holding the suit not barred by limitation, to — it for retrial on the merits.—1 W. R. 32.

14. The order of a Lower Appellate Court over-ruling the defence of limitation and remanding the suit for trial on the merits, if not immediately appealed against as a decree, may be treated as an interlocutory order, and be objected to when the ultimate decision is appealed against. —1 W. R. 51.

15. A Lower Appellate Court upon — for the trial of a particular issue, cannot decide upon a different issue.— 2 W. R. 39.

16. A case remanded to a Lower Appellate Court for a statement of the Judge's reasons for his judgment in appeal, cannot be decided *de novo*, on its merits, by his successor.—2 W. R. 275, 5 W. R. 124.

17. The Judge, whose reasons for his judgment were called for, and whose judgment was based on evidence not before the first Court, having left the country, the case was remanded to the first Court for re-hearing.—*Ib.*

18. An order of — is exceeded when the Lower Court re-opens a question already decided.—3 W. R. 132.

E.g. the question of limitation.—14 W. R. 370.

Or a question of title.—24 W. R. 330.

19. When a case is remanded for the trial of the lawfulness or unlawfulness of an alleged act, the Court is wrong in allowing the litigation before it at the last moment of a question never before raised, viz. whether the act was committed.—3 W. R. 198.

20. A — for trial on the merits does not prevent adjudication upon any other issue (*e.g.* limitation).—3 W. R. (Act X) 158.

Held *contra* that it shuts out objections regarding limitation or res judicata.—24 W. R. 333.

21. The — of a case to a Lower Appellate Court for the purpose of stating reasons for reversing a judgment of the first Court, is no warrant for the confirmation of that judgment.—4 W. R. 33.

22. In a suit for share of joint ancestral property, where defendants claim under a will and deny that the property was joint, and the first Court dismisses the claim as barred by limitation, but the Lower Appellate Court remands the case for trial on a different issue, the order of — is not an interlocutory order but a judgment.—4 W. R. 101.

23. The failure of a party to take advantage of a postponement for the purpose of tendering further evidence, cannot give him a right to a — for such evidence, to which, without such postponement, he was entitled under s. 354 Act VIII.—5 W. R. (Act X) 8.

24. A respondent in the Lower Appellate Court who, under s. 348 Act VIII, took in writing an objection on the ground of jurisdiction which was not noticed, was held in special appeal entitled to a — to that Court for an adjudication on that point.—6 W. R. 289.

25. Where a Judge enters into the merits of a case remanded to his predecessor for a legal judgment, if he admits further evidence on the part of defendant, he cannot refuse that offered by plaintiff.—6 W. R. (Act X) 16.

REMAND (*continued*).

26. An order of — to a Lower Appellate Court implies a reversal of the first judgment of that Court.—7 W. R. 326.

27. When a case is remanded for trial on the merits, evidence may be received from defendants who appeared at the former trial, and also from those who did not appear. —8 W. R. 285.

28. Where an appeal is made on the ground that the Court of first instance ought to have found that an *ijara* existed, the Appellate Court should determine whether the fact has been proved and not — the case for re-trial.—9 W. R. 106.

29. Where a case is remanded to be tried on fresh issues, the parties are entitled to have a day fixed for the reception of further evidence.—9 W. R. 294.

30. Where a Deputy Collector rejects an application from a third party under s. 77 Act X, a Judge has no jurisdiction, on that party's appeal, to — the case to the Deputy Collector for re-trial with directions to make the intervenor a party.—9 W. R. 345.

31. The object of a — under s. 354 Act VIII is not that the Judge should try the issues on the evidence already taken, for the Court sitting in regular appeal can do that itself; but that he should take such evidence as the parties may have to offer for the determination of the issues.—10 W. R. 244.

32. Where a case is remanded with a view to some special evidence being taken upon a particular issue, the Court receiving the order of — is not at liberty to go anew into the case and allow both parties to produce additional evidence.—10 W. R. 303. *See also* 22 W. R. 207.

33. Where a Lower Appellate Court has before it all the evidence which the parties wish to adduce, and decides upon a preliminary point, it has no authority (with reference to ss. 351, 352, and 353 Act VIII) to — the case, but should itself try it.—10 W. R. 371. *See also* 25 W. R. 35, 131.

34. An Appellate Court is not justified in remanding a case for re-trial under s. 351 Act VIII merely because the Lower Court has disposed of it upon a preliminary point, unless such point has been so disposed of as to exclude evidence of fact which appears to the Appellate Court essential to the rights of the parties.—10 W. R. 378; 13 W. R. 107; 14 W. R. 380; 20 W. R. 118, 213; 21 W. R. 413; 22 W. R. 221.

35. An order remanding for additional evidence a case which has been tried on its merits by the Lower Court, is opposed to s. 352 Act VIII.—10 W. R. 388.

36. Where the first Court determined the suit upon a substantial issue going to the whole merits of the case, the Lower Appellate Court cannot — the case in order that it might be tried on the merits.—10 W. R. 111. *See also* 10 W. R. 469.

37. Where a Lower Appellate Court found that a suit, falling substantially under s. 230 Act VIII and treated as such, had been summarily dismissed by the first Court on a point which did not properly arise under that section, the former should have remanded the case.—10 W. R. 438.

38. Where a case is remanded for the trial of an issue not laid down by the Court which tried the case, the parties are entitled to adduce evidence although the order of — contains no express direction to that effect.—10 W. R. 491.

39. *Quære.* Whether a Lower Appellate Court can — a case for trial upon an issue not satisfactorily tried by the Court of first instance.—11 W. R. 35.

40. An Appellate Court is wrong in remanding a case under s. 354 because the Lower Court rejected defendant's testimony without any distinct opinion of its value.—11 W. R. 106.

41. When a Full Bench ruling is brought to the notice of a Judge re-trying a case on —, he must satisfy himself as to it, so as to apply the correct law.—11 W. R. 227.

42. Where a Court has thrown the burden of proof on the wrong party, the case ought ordinarily to be remanded to that Court for re-trial after it has put the burden on the right party.—11 W. R. 249.

43. Where, in a suit for declaration of title, the Lower Appellate Court finding defendant's alienation not satisfactorily proved, remands the case for a finding on that issue, such order is illegal under s. 354 Act VIII.—11 W. R. 550.

44. When a case is remanded to be tried under the terms of s. 148 Act VIII, a Court is not justified in taking and determining on any evidence not on the record at the time of —.—12 W. R. 23.

45. The effect of an order of — for a new trial is entirely to nullify the first decision and to re-open the whole case. —12 W. R. 112, 21 W. R. 7.

46. Where the evidence of a defendant had been taken by the first Court so imperfectly that the Lower Appellate Court could not pass a satisfactory judgment between the parties,—*Held* that it was competent to the latter Court under s. 355 Act VIII to fully examine the defendant and record his reasons for so doing but not to — the case.—13 W. R. 85.

47. Where the High Court has been led into an order of — on a false issue, and the Lower Appellate Court comes to a finding of fact which correctly disposes of the case, the default of the latter should not govern the final result.—13 W. R. 91.

48. The terms of s. 148 Act VIII do not prevent an Appellate Court, on good and sufficient cause shown, from remanding a case disposed of thereunder, in order that justice may be done between the parties.—13 W. R. 464.

49. Where a case is remanded for re-trial, some date should be fixed for the re-hearing.—14 W. R. 401.

50. A case remanded to a District Judge for the purpose of a local enquiry, cannot be transferred to a Subordinate Judge for disposal.—15 W. R. 574.

51. The meagreness of the judgment of a Lower Appellate Court can only warrant a — when the judgment does not show that the Court has considered the evidence.—16 W. R. 15.

But where an Appellate Court has considered a case and come to the same conclusion as the first Court, occasional obscurity in the judgment of the former does not constitute a proper ground for a —.—25 W. R. 276.

52. A Judge was held to be perfectly justified in remanding a case which was decided without a fair opportunity being given to the plaintiff to know the line of defence he had to meet.—17 W. R. 446.

53. A Judge who, after disposing of a case on the only point which the Moonsiff had decided, viz. whether there was a cause of action, and satisfying himself that there was not sufficient evidence to enable him (the Judge) to decide upon its merits, was held justified in remanding the case to the Moonsiff.—17 W. R. 466.

54. Where the Lower Court, though requested to send for the records of a former suit, in which, it was alleged, the decree afforded important evidence in support of plaintiff's case, omitted to do so, the case was remanded with a view to the omission being supplied.—18 W. R. 127.

55. Where no objection was taken in the grounds of appeal to the issues as framed in the first Court, and there is no such contention as that the High Court ought to direct the Subordinate Court to raise the proper issues, the Court refused to — the case with this view.—23 W. R. 158.

56. Where a Subordinate Judge's decision in appeal was not a right decision (his orders having been impossible of execution), the District Judge was held to have been empowered under s. 354 Act VIII to — the case, after fixing an issue, for a finding.—23 W. R. 347.

57. Where a case was remanded for reconsideration of the whole evidence with the exception of one specified point, and the Judge after consideration came to the conclusion that his finding on that point had been erroneous,—*Held* that he was at liberty to reconsider the evidence on this part of the case, and to alter his previous finding.—24 W. R. 316.

58. To justify a — it must be shown that the Lower Court has committed some error in law, or that the case comes in some other way within the terms of s. 372 Act VIII. —25 W. R. 325.

See Appeal 140, 159, 162.
Appellate Court 11.
Arbitration 48.
Compromise 6.
Costs 39, 43, 54, 70, 76.
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REMAND (*continued*).

See Enhancement 35.
Error 3.
Evidence (Estoppel) 96.
High Court 35.
Interest 35.
Intervenor 1.
Jurisdiction 266.
Limitation 9, 122, 135, 155.
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Mortgage 62, 93.
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Practice (Appeal) 4, 17, 19, 31, 34, 35, 52, 54, 58, 65, 88, 90, 99.
,, (Commissions) 4, 11, 34.
,, (Execution of Decree) 57.
,, (Parties) 8, 9, 12, 22.
,, (Review) 81, 92.
Privy Council 17, 89.
Registration 84.
Revival of Complaint 3.
Sale 136.
Special Appeal 10, 19, 20, 21, 38, 56, 115, 118, 138, 140, 153*a*, 162.
Stamp Duty 13, 24.
Vakalutnamah 1.
Value of Suit or Appeal 11, 14.

Re-marriage.

See Hindoo Law (Coparcenary) 86.
Marriage 15, 17, 19, 23, 31.

Remission.

1. In a suit for rent against a mokurrureedar, he is entitled to a set-off on account of — of rent by reason of a portion of his tenure having been taken by Government for public purposes though the pottah did not provide for such a — and the superior holder did not obtain a similar benefit from the zemindar.—2 Hay 495.

2. A — of rent by a Naib who is shortly afterwards dismissed from office, requires the sanction of the zemindar. —8 W. R. 452.

3. A landlord receiving — from Government on account of damage done to his estate by a cyclone, is not on that account bound to allow a — to his under-tenants, unless he received the former on that understanding or agreement. —15 W. R. 167.

See Abatement 14.
Co-sharers 16.
Hajuts.
Onus Probandi 158.
Putnee Talook 14.

Remoteness.

See Hindoo Widow 9.

Rent.

1. In a suit for — where a third party intervenes, the question of receipt and enjoyment of — by the intervenor should alone be enquired into.—W. R. F. B. 14 (1 Hay 225, Marshall 50). *See also* Sev. 128.

2. A tenant paying — to the superior landlord after the grant of an intermediate lease, but without notice of it, is not liable to the intermediate lessee in respect of the same —.—W. R. F. B. 30 (1 Hay 240, Marshall 102).

3. The acceptance of — for 40 years ratifies mokurruree pottah granted prior to Reg. VIII 1812. Omission to pay — may be good ground for a suit for arrears or for ejectment, but not for cancelment of a pottah not otherwise impugned.—W. R. F. B. 34 (1 Hay 207).

4. Question for decision in suit by ryot to reverse summary award for —.—W. R. F. B. 36 (1 Hay 208).

5. Definition of —.—W. R. F. B. 48 (1 Hay 350, Marshall 151).

6. A suit for arrears of — at a certain rate decreed on a former suit, may be maintained without notice under Reg. V of 1812, the decree itself being held to be sufficient notice.—W. R. F. B. 93 (2 Hay 449, Marshall 396).

7. Different rates of — cannot be fixed for ryots expending their own capital and ryots borrowing it.—W. R. F. B. 131.

8. Rate of — which a landlord is entitled to demand, how to be fixed.—*Ib.*

9. In a suit by a landlord for — the Judge cannot fix the term.—*Ib.*

10. A party who attempts to recover — from his under-tenants at a higher rate than is stated in the pottah granted to them by his mother as his guardian, must sue her first to set aside that pottah as granted beyond her power as a Hindoo widow.—1 Hay 188.

11. The mere fact that certain lands held by the defendant are within a certain zemindaree purchased by the plaintiff, may be a ground of suit for assessment of — but is no ground for decreeing — at a specific jumma.— 1 Hay 307.

12. The zemindar (defendant) refused to receive from the talookdars (plaintiffs) — at the rate asserted by the latter, who, thereupon, deposited the amounts from time to time in the Zillah Court. The zemindar, having drawn out these amounts, sued for arrears of — alleging that the money paid into Court covered only the principal and interest of a certain period, and obtained an *ex-parte* decree. Plaintiffs now sue for a refund of the money paid into Court as having without their consent been irregularly carried to the account of interest. *Held* that the present claim is barred as *res judicata*, and that, if a tenant has paid his landlord in excess, his proper course is not to sue for a refund, but to claim credit for the overpayment from the next —.—1 Hay 501.

13. When a tenant in a suit for — does not deny the rate of —, but pleads non-liability as having transferred his interests and not being in possession, if this plea be found untrue, he is liable to pay the rent claimed, though the plaintiff may fail to prove the rent previously paid by him.—1 Hay 519.

14. In a suit for —, if a third party intervene under s. 77 Act X of 1859, and the Court find that he, and not the plaintiff, is entitled to the —, the proper course is to dismiss the suit, notwithstanding the intervenor admits that he is liable to pay — to the plaintiff.—Marshall 258.

15. Where A, without title has collected rents due to B, B may sue A for the recovery from him of the rents so received.—2 Hay 198 (Marshall 269).

16. Where land forfeited to Government by a conviction of the owner as a rebel under Act XXV of 1857, is subject to —, the person entitled to the — cannot recover arrears due at the time of the forfeiture, either from the heirs of the owner or from the Government; but the Government is liable for the — which may subsequently accrue.— 2 Hay 226 (Marshall 308).

17. In an ordinary suit for —, the question whether the — is fixed or variable is not involved.—2 Hay 286 (Marshall 278).

18. The joint proprietors of a piece of land covenanted that, at the end of the year, they would divide it; and that if cultivation should not take place, then no claim for — could be made; but that if cultivation took place, then — at a stipulated rate should be paid to all the proprietors. A suit brought by one of the proprietors for arrears of the whole of the stipulated —, was held to be not a suit for — within the meaning of s. 23 Act X of 1859.—2 Hay 439.

19. A suit is not maintainable, under Act X of 1859, to recover a sum due under a decree for — obtained under Reg. VII of 1799, and remaining unsatisfied after sale of the tenure.—2 Hay 445 (Marshall 340).

20. In a suit for —, where a third party intervenes under s. 77 Act X of 1859, the only question that can be tried is the actual receipt of rent; and if any party claims a legal title to it, he must establish his right in a Civil Court.— 2 Hay 450 (Marshall 365).

Rent (*continued*).

21. A suit for — will not lie for land measured by the Collector as belonging to plaintiff's estate if he has never received any — for it.—2 Hay 584.

22. Subsequent to getting a decree from the Zillah Court for 10,185Rs. as — for 1245, plaintiff by a letter accepted 2000Rs. as the yearly — to be paid by the defendant, with a proviso empowering the plaintiff to fall back upon the rights given by the decree in case of default by defendant to pay the reduced — in full. *Held* that that letter did not merely place in abeyance for a time the execution of the decree but substituted 2000Rs. for 10,185Rs. as the yearly — to be thereafter paid by the defendant.—1 R. J. P. J. 219 (Sev. 797).

23. Payments of —, if made without specification, must be held to be for the current year; and surplus — for past and not subsequent years.—W. R. Sp. (Act X) 14 (2 R. J. P. J. 87). *But see* W. R. Sp. (Act X) 133 (3 R. J. P. J. 123).

24. According to the rule of law that, if a debtor having two distinct debts due to a creditor makes a general payment, the creditor may appropriate the payment to which account he pleases, it was held that a general payment of — by a tenant may be credited by the landlord to whatever year he pleased.—W. R. Sp. (Act X) 14 (2 R. J. P. J. 89). *See also* 3 R. J. P. J. 162, 7 W. R. 511.

25. A suit for — will not lie until the relationship of landlord and tenant is established.—W. R. Sp. (Act X) 39, 40 (2 R. J. P. J. 200, 201). *See also* 25 W. R. 214.

26. Where a plaintiff asked for a decree at the rates admitted by the defendant in the event of his claim for enhanced rent being dismissed, and the defendant had not paid the — due from him, arrears of — at the old rates were decreed against him.—Sev. 185, 2 W. R. (Act X) 14. *See* 11 W. R. 462.

27. Where a former Judge upon appeal confirmed the decision of the first Court as to the rate of —,—*Held* that it was not open to the present Judge to touch the amount of jumma.—Sev. 143.

28. Neither under Act X of 1859 nor Act XIV of 1859 can more than 3 years' back — be recovered.—3 R. J. P. J. 33.

29. A landlord cannot sue for — on resumed land until it has been regularly assessed.—3 R. J. P. J. 145.

Modes of assessment in such cases.—15 W. R. 483, 24 W. R. 447.

30. Payment of the entire — of a subsequent year affords a presumption of the payment of the — of the previous year.—W. R. Sp. (Act X) 65, 1 W. R. 274 (3 R. J. P. J. 332). *See* 45 *post*.

31. A judgment by default is not a satisfaction of the — sued for.—W. R. Sp. (Act X) 85 (2 R. J. P. J. 366).

32. A landlord cannot hold both the nominal lessee and the benameedar liable for —, but must make his election.—W. R. Sp. (Act X) 88 (3 R. J. P. J. 15).

33. The sending of an agent by a tenant to settle with the landlord as to the —, is not tantamount to an acquiescence in the rate of — demanded.—W. R. Sp. (Act X) 115 (3 R. J. P. J. 106).

34. A tenant who holds without an agreement is only liable to a fair —.—*Ib.* *See also* 4 W. R. (Act X) 15, 7 W. R. 28.

35. A tenant is bound to pay the amount of — which he has agreed to pay. The plea of the quantity of land being less than that mentioned in the pottah cannot avail him.—W. R. Sp. (Act X) 122 (3 R. J. P. J. 114).

36. A *primâ facie* rent-free holding must be set aside in some other suit before — can be obtained.—1 W. R. 15 (3 R. J. P. J. 138).

37. Proper rate of — not correctly fixed by an average of different rates given by defendant's witnesses; but the *onus* of proving the rate is on plaintiff.—1 W. R. 58.

38. A plaintiff can recover — for such lands only as he can prove that defendant cultivated.—1 W. R. 83.

39. Non-payment of —, arising from the existence of some *bonâ fide* dispute, does not involve liability to forfeiture of tenure or to damages.—1 W. R. 129.

40. — cannot be claimed where a ryot's crops have been illegally attacked and destroyed by the landlord.—1 W. R. 240 (3 R. J. P. J. 283).

41. — paid to third party at the instance of landlord not recoverable by landlord. S. 77 Act X not applicable to such a case.—1 W. R. 254 (3 R. J. P. J. 325).

42. A decree fixing the — for a previous year cannot over-ride an agreement for higher — for the following year.—1 W. R. 275 (3 R. J. P. J. 335).

43. When a plaintiff, suing for arrears of —, cannot satisfactorily prove his case, he must either have his suit dismissed or take a decree admitted by the defendant.—1 W. R. 288. *See also* 10 W. R. 81, 23 W. R. 85, 24 W. R. 4.

44. Recovery of current year's — under Reg. VII of 1799 affords no presumption that the — of prior years had been satisfied.—2 W. R. 57.

45. Presumption of payment of — of earlier years from payment of — of subsequent years does not arise unless payment be specially pleaded.—2 W. R. (Act X) 31 (4 R. J. P. J. 63).

46. In a suit for — and damages in which the amount of — payable is in issue, the plaintiff must show by the best evidence that in past years the defendant has paid what plaintiff is now demanding; secondary evidence being only admissible when the absence of primary evidence is satisfactorily accounted for.—2 W. R. (Act X) 43.

47. In a suit for arrears of — at an enhanced rate, where defendant successfully pleads a mokurruree pottah, plaintiff cannot obtain a decree for arrears at the mokurruree rate when defendant does not admit arrears.—2 W. R. (Act X) 55. *See* 62 *post*.

48. Rate of — may be fixed in a suit under s. 14 Act X to contest a notice of enhancement, whether at the instance of the landlord or tenant.—2 W. R. (Act X) 91 (4 R. J. P. J. 205), 7 W. R. 470.

49. A suit for — against four defendants must be dismissed if the whole is proved to have been paid by one.—2 W. R. (Act X) 94.

50. A suit for — brought during pendency of a suit for a kuboolcut, should not be struck off, but kept in abeyance, until the other is decided.—3 W. R. (Act X) 5.

51. Tanks may be assessed with a fair and equitable rate of — independently of the acts of Government.—3 W. R. (Act X) 132, 116.

52. Principle of assessment not affected by the mere magnitude of present holding.—3 W. R. (Act X) 160.

53. Procedure when the rents decreed for previous years have still to be ascertained.—3 W. R. (Act X) 169.

54. The assessment of revenue on resumed lakheraj land does not entitle the landlord to claim a re-adjustment of the rents of ryots holding at fixed rates from the Permanent Settlement.—3 W. R. (Act X) 170.

55. As a general rule, a plaintiff who has attached the lands of a tenant and collected the rents due by a sezawal, will not be entitled to claim from the tenant the difference between the collections made by the sezawal and the actual rents.—5 W. R. (Act X) 40.

56. As long as a ryot retains possession of any portion of his jote, he is liable to the — of the whole.—5 W. R. (Act X) 78.

57. All cesses being illegal when not specifically included in the contract under which the ryot pays —, the mere payment of — including a cess for 3 years, cannot legalize an illegal impost.—5 W. R. (Act X) 85.

58. A zemindar can only sue the holder of resumed lakheraj land in possession for —, but not oust him as a trespasser.—6 W. R. 286.

59. The appointment of a sezawal by the landlord absolves the lessee from liability for — subsequent to such appointment and during the continuance of it.—6 W. R. (Act X) 23.

60. In the case of transfer of a mere ryot's jote, the person in possession is liable for the — whether he is registered or not.—6 W. R. (Act X) 32.

61. A suit for — against several parties is maintainable against such of them as are shown to be in possession as tenants, whether they are registered or not.—6 W. R. (Act X) 36.

62. In a suit to enhance, if plaintiff cannot prove his right to enhance, a decree cannot be given at the ordinary rate, but the suit must be dismissed.—6 W. R. (Act X) 2, (P. C.) 19 W. R. 141, 20 W. R. 186, 21 W. R. 35.

Held otherwise in a suit for enhanced —.—6 W. R. (Act X) 96; 22 W. R. 13, 351; 24 W. R. 82.

63. Mere relinquishment of land will not excuse a tenant from payment of —.—7 W. R. 250.

64. In a suit for ejectment, — cannot be decreed.—8 W. R. 181.

65. Where a suit for enhanced — is dismissed by first

RENT (*continued*).

Court, and no claim for old rates is made in regular appeal, they cannot be claimed in special appeal.—8 W. R. 252.

66. Act X applies where — is reserved in kind as where it is paid in money, but not where articles are to be delivered under a separate agreement unconnected with the question of —.—8 W. R. 393.

67. The purchaser of a specific share of a talook is liable for the — of his share, which may be determined by the separate jumma of each tenure and the specific share of each shareholder.—8 W. R. 469.

68. Where plaintiff granted a pottah which provided that the calculation of — should be permanently made within 6 months, until which time defendant should pay a provisional jumma,—*Held* that, until the settled jumma had been ascertained, the — due would be the provisional sum. —9 W. R. 495.

69. A landlord cannot claim — under a kubooleut where the tenant has never obtained possession, delivery of possession being ordinarily a condition necessary for the maintenance of an action for —.—9 W. R. 582.

70. Fair and equitable rates.—*See* Enhancement 7, 23, 35, 37, 68, 88, 109, 120, 142, 172, 223, 227, 282, 291; Occupancy 95; Onus Probandi 219; Pottah 32.

71. The plea of partition of the land set up by joint tenants in a suit for — cannot avail if not shown to have been recognized by the landlord.—10 W. R. 392. *See* 22 W. R. 295.

72. Rent in kind.—*See* Bhaolee; and 75, 96, 98, 105, 111, 112 *post*.

73. Excess rent.—*See* Cesses 8; Limitation (Act XIV of 1859) 254; Putnee Talook 102; Refund 3; and 12 *ante*.

74. One man has not a right to pay — due from another. —11 W. R. 120.

75. In a suit to recover *bhaolee* —, the damage to the plaintiff was held to be the value of the crops at the time they were due and not subsequently.—11 W. R. 151. *See also* 25 W. R. 307.

76. Where a suit by the purchaser of an alleged lakheraj tenure for — from his under-tenant is thrown out by the intervention of the superior landlord under s. 77 Act X, all that the purchaser has to do in a regular suit is to prove that he is entitled to the —.—12 W. R. 197.

77. In a suit for — where defendant pleads payment to a tehseeldar appointed by plaintiff to collect the rents, the plea should be put in issue and defendant should not be referred to a Civil Court.—13 W. R. 266.

78. A Collector is not competent in a decree for — to make a special direction, such as that realization shall be against the property of the judgment-debtor.—13 W. R. 312.

79. Where the zemindar was not merely a party assisting in the dispossession of certain tenants, but actually gave the lease under color of which the tenants were dispossessed, the zemindar was held precluded from suing the tenants for — on account of the period of time while they were out of possession, although the latter had recovered a decree for possession with mesne profits for the period of dispossession.—13 W. R. 338.

80. For the purposes of Acts VIII and X of 1859, — comes within the terms "property" and "moveable property."—13 W. R. 401.

81. In a suit by putneedars for — when the defendants plead a lakheraj title set up long before the plaintiffs acquired their putnee, the issue to be tried is not whether the lakheraj title is valid or not, but whether plaintiffs have at any time received — for the lands in dispute.— 14 W. R. 149.

82. The person into whose hands a transferable tenure comes is bound to pay — to the landlord, unless kept out of possession and enjoyment by the fault of the landlord; and the landlord's right to claim — from his tenant does not depend upon the fact of possession by the tenant.— 14 W. R. 273.

83. A zemindar is not bound to recognize as his tenant one whose name is not registered in his books; and it is sufficient for him to bring his suit for — against the parties from whom he has hitherto received —.—15 W. R. 99.

Except when he has recognised other persons as his tenants either by receipt of — or otherwise.—15 W. R. 264.

And so under s. 27 Act X.—15 W. R. 320.

But the giving of receipts for — by a gomashta for one or two years will not bind the zemindar in a case of transfer without the zemindar's consent.—16 W. R. 97.

84. When a zemindar has obtained an *ex-parte* decree declaring certain lands to be his *mâl* lands, his only remedy is to have the rate of — determined under s. 10 Reg. XIX of 1793 and to obtain a kubooleut, and he must sue in the Collector's Court under cl. 1 s. 23 Act X.—15 W. R. 345.

85. Where A covenants to — from B a certain quantity of land at a certain rate and stipulates to pay — at that rate for any excess land found after measurement, he is liable to pay at that rate for all excess land, and the tender of a pottah is not necessary.—15 W. R. 410.

Nor is a notice necessary under ss. 18 and 19 Act VIII of 1869 (B. C.)—19 W. R. 109.

86. Where tenants, after mortgaging their lands unknown to the landlord, agree to pay an increased —, and the property is sold in satisfaction of the mortgage-debt, the landlord may recover the increased — from the tenants or the party succeeding to their rights and interests.— 15 W. R. 448.

87. Where the owner of an undivided estate lets his share to a tenant by giving a pottah and taking a kubooleut, a suit for the — of such undivided share, treated as a separate and distinct under-tenure, may come under s. 4 Act VIII of 1865 (B. C.).—15 W. R. 524.

88. The mere fact that a tenure is written in the zemindar's books in the name of one person while another is shown to be in possession, is not enough to support an action for — against the person in possession without a contract (express or implied) to pay —.—16 W. R. 233.

89. An allegation of wrongful ejectment of defendant by plaintiff is no answer to a suit for — during the period of dispossession.—17 W. R. 258.

90. Where the *jummas* of different tenures are distinct, the tenure must be treated as distinct, and the — charged accordingly.—17 W. R. 346.

91. Reservation of — is a sufficient consideration in law. —17 W. R. 420.

92. A zemindar and putneedar being bound together by the terms of a written contract (the putnee pottah), the zemindar can only sue for — on the terms of that contract, but not for rent for the use and occupation of his land.— 17 W. R. 494. *See also* 20 W. R. 400.

93. In a suit for — the Court should find what was the contract between the parties, what the area and jumma, and to what arrears (if any) plaintiff was entitled, and not proceed upon a kind of rule of proportion having reference to a former decision.—18 W. R. 398.

94. In a suit for arrears of — where defendant's plea of payment falls to the ground, the fact of plaintiff having sued upon a false ground is no reason why he should not obtain a decree at the rate fixed by a former decree as the proper rate demandable from the defendant.—19 W. R. 233. *See* (F. B.) 21 W. R. 208.

95. An indivisible tenure cannot be split into parts with a view to the institution of different suits against the tenants for arrears of —.—19 W. R. 239.

96. When defendants admitted having held certain *bhaolee* land but pleaded that it was washed away, and the first Court regarded the plea as untenable, —*Held* that this was not an absolute finding that there had been no diluviation, and that the Court was not bound to fix on defendant's admission and hold him liable for — of the *bhaolee* land.—19 W. R. 430. *See* (F. B.) 24 W. R. 208. *But see* 20 W. R. 64.

97. Where a landlord sues a ryot for arrears of — alleged to be due under a kubooleut, and the Court finds that such kubooleut has not been executed by the ryot, but it appears notwithstanding that the ryot occupied the land under the zemindar, the landlord's right to have a further trial of the question whether any — and how much is due, will depend upon the claim stated in the plaint. If that claim is in the alternative and the ryot thus has notice that, on failure to prove the kubooleut, the landlord will claim — for the occupation of the land, the landlord is entitled to have that issue tried; but if a claim for — on account of such occupancy is not in the plaint, the landlord is not so entitled, although it is in the discretion of the Court to amend the plaint on the issues, and when the omission has been from inadvertence or mistake, it would generally be proper to do so.—(F. B.) 21 W. R. 208. *But see* 23 W. R. 465.

Rent (*continued*).

98. In a suit for arrears of —, where plaintiff failed to make out his claim to *bhaolee* —, and the first Court finding that there was evidence of a commutation, dismissed the suit with a reservation of plaintiff's right to bring a fresh suit for *nukdee* —, and the Lower Appellate Court finding that the defendant had admitted owing — in money, decreed the claim to the extent of the admission,—*Held* that the Lower Appellate Court was right, and that the reservation of right by the first Court was of doubtful operation.—21 W. R. 438.

99. If a zemindar demand a cess over and above the original — and the ryot consents and contracts to pay it, this demand and the old — form a new — lawfully claimable under the contract.—22 W. R. 12.

And so if a ryot, for the purpose of preventing disputes with his landlord, agrees to make a definite payment to the landlord in addition to his —, the additional payment cannot be treated as an illegal cess, for s. 3 Reg. V of 1812 rather favors such arrangements and provides for their being enforced.—25 W. R. 252.

100. The fact of some of the joint occupiers of a joint tenure paying portions of the — due from all, corresponding with the shares for which the joint occupiers are liable, cannot prevent the zemindar from suing them all or making them all answerable for the joint debt.—22 W. R. 295.

101. In a suit by a landlord to recover arrears of — from tenants forcibly compelled by the superior holders of a tenure over the plaintiff to execute a kubooleut to themselves,—*Held* that the act of the superior holders was not in law sufficient to constitute an ouster of the plaintiff, but gave the tenant defendants a cause of action against them for damages.—22 W. R. 337.

102. In a suit for arrears of —, plaintiff must show that there was some contract to pay — entered into by defendant; this may be shown either by the evidence of some contract or by evidence of previous payment from which a contract could be inferred.—22 W. R. 346.

103. Receipts signed by the landlord's agent, if shown to be authentic, are *primâ facie*, but not conclusive, evidence of payment of —.—22 W. R. 489.

104. Where the final decree in a suit for possession declared that defendant had a right of occupancy on payment of a proper — and was liable for — from the date of suit, without defining the rate of —,—*Held* that the decree was imperfect, that the — could not be ascertained in execution, and that another suit was necessary to determine the proper —, *i.e.* to carry out the decree.—23 W. R. 228.

105. A landlord who refuses to accept *bhaolee* — or — in kind when offered to him, on the ground that he is suing for a money —, cannot, on the dismissal of his suit, come into Court again and sue his tenant for the value of what he refused when it was proffered.—23 W. R. 368.

106. Where tenants, who were *aymadars*, voluntarily signed a *jummabundee* drawn up under s. 9 Reg. VII of 1822, specifying the amount of — payable by them to the Government farmers with whom the settlement was made,—*Held* that the tenants were not entitled to a deduction from such specified — on account of costs of collection.—23 W. R. 136.

107. A putwaree's wages and allowances are in the nature of illegal cesses and cannot be recovered in a suit for —.—23 W. R. 417.

108. Certain payments which were not so much in the nature of cesses as of — in kind, and which were uniform and had been paid by the ryot from the beginning according to local custom, were held not to be illegal cesses.—24 W. R. 4.

109. Where a lease was granted by a Deputy Collector without authority and soon afterwards set aside by the Collector, the tenant who was turned out of possession without any beneficial occupation from the short period of his lease, was held not liable for —.—24 W. R. 91.

110. If a plaintiff's title to the — claimed is disproved, his suit must fail, even if he is in possession and has realized the rents of previous years.—24 W. R. 101. *See also* 24 W. R. 409.

111. In a suit for *bhaolee* — where the quantity of land is disputed and the landlord produces as evidence a *khusra* or appraisement of the land, it is not necessary for him to show that the estimate was drawn up in defendant's presence and acknowledged by him, but only that defendant had notice when the *khusra* was about to be made.—24 W. R. 125.

112. Where a proposal of a *nukdee* settlement is refused by a tenant who has heretofore paid — in kind but whose tenancy has expired, the landlord is quite at liberty to let the land to another person.—24 W. R. 218.

113. If the question of title legitimately arises between the parties to a — suit, the Court is not compelled to dismiss the suit, but is bound to determine the question for the purposes of the suit.—24 W. R. 350. *See* 24 W. R. 409.

114. A rate of — decreed to a landlord for a certain year is binding on the tenant as regards ensuing years, until the latter obtains a decree to a different effect.—25 W. R. 10.

115. A landlord who has let out land at a certain —, the — being payable in one sum for the whole, and the land not being let to the tenant in separate parcels in respect of each of which there is a separate assessment of the — payable to the landlord, cannot, without the consent of the tenant, alter the position of the latter and say that in future so much of the — shall be payable in respect of one parcel only, and so much in respect of another.—25 W. R. 95.

116. A tenant cannot afterwards be held liable for — which he pays to a third party (co-sharer) with the acquiescence of his landlord expressed or implied; and where the relation of landlord and tenant ceases with the consent of the landlord, the landlord cannot again claim — unless he shows how or when the relation revived.—25 W. R. 114.

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Representative.

1. It is in the discretion of the Court to allow what it may in each case consider a reasonable time for the representatives of a deceased plaintiff or appellant to apply for the entry of their names in the register.—1 Hay 144. *See* 15 W. R. 58, 20 W. R. 267.

What is not a reasonable time.—11 W. R. 543.

2. A suit is maintainable, under Act XII of 1855, against personal representatives for a wrong done by the deceased within a year of his death, although such wrong be of a purely personal character, as, for example, defamation.—2 Hay 325 (Marshall 344).

3. The Mahomedan law recognizes no right by representation.—Sev. 55.

REPRESENTATIVE (*continued*).

4. In a suit against the sons of a deceased debtor, as his representatives, the decree should be against the defendants as representatives, and the judgment-creditor left to proceed under s. 203 Act VIII of 1859.—Sev. 101.

5. In a suit against the representatives of a deceased obligor of a bond, if plaintiff makes it the foundation of his case that the defendants are in possession of property belonging to the deceased, the defendants can take issue upon that statement and, if they succeed, will be entitled to a decree absolving them from all liability. But if the suit be against the defendants simply as heirs and representatives of the deceased and plaintiff prays for a decree without going into the question of assets or no assets, he will be entitled to a decree on proving the execution of the bond and the enforcement of his decree under s. 203 Act VIII.—14 W. R. 431.

6. In a sale in execution against the — of a deceased person, the description of the property to be sold should contain the name of the defendant and should say "the right, title, and interest, of the defendant as — of the deceased."—18 W. R. 55.

7. Where a suit is brought under s. 203 Act VIII against the — of a deceased person, the defendant need not be sued in any "capacity," but should be described as stated in s. 26, and the plaint should contain an allegation that he is the — of such deceased person.—20 W. R. 280.

8. A Hindoo brother who, during the lifetime of another, was separate in transaction and lived separately from him and was therefore not a joint member of the same family, is not his legal — after death.—23 W. R. 231.

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Re-Sale.

1. In a — for default under s. 253 Act VIII, the officer conducting the sale is not bound to commence from the next highest bid below that made by the defaulter, instead of commencing *de novo*.—1 W. R., Mis., 11.

2. Under ss. 253 and 254 Act VIII, if the purchaser at an execution-sale does not make the required deposit, he will be liable in damages in case of a — at a loss; and an order absolving him from liability is appealable.—3 W. R. 3.

But the purchaser is not so liable if — takes place for his default to pay the purchase-money.—16 W. R. 14.

3. Non-deposit of earnest-money does not affect the validity of a bid at a sale of a Government estate, but the defaulting bidder is liable for damages for loss on —.—3 W. R. 54 (4 R. J. P. J. 402).

4. In case of a — under s. 254, the judgment-debtor is entitled to credit for the amount bid at the first sale.—7 W. R. 110. *See* 21 W. R. 149.

5. But the difference paid by the defaulting purchaser does not carry interest.—9 W. R. 500.

6. S. 253 was held applicable in a case where the — did not forthwith take place on the day of the sale, but on a subsequent date. It is only on failure of a purchaser to pay in the balance of the purchase-money under s. 254, and not on his failure to make the deposit required by s. 253, that the purchaser can be compelled to pay up the difference between the first and second sales.—17 W. R. 271.

See Appeal 135.
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Rescuing Prisoner.

A person — apprehended by a Police Officer as a member of an unlawful assembly, is guilty of an offence under s. 225 Penal Code.—13 W. R., Cr., 75.

See Escape.

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Resistance to Distraint.

1. What was held to be entirely a misconception of the proceedings intended by s. 101 Act VIII of 1869 (B. C.).—20 W. R. 445.

2. *Quære.* Whether a proceeding under s. 101 ought to be entertained after a charge in the Criminal Court has been made and dismissed.—*Ib.*

3. Ryots are not protected by s. 79 Penal Code for — of crops where the zemindar's people enter upon the crops with intention of distraining after notice under s. 116 Act X of 1859.—23 W. R., Cr., 40.

See Appeal 178.
Fraudulent Removal or Concealment 2.

Res Judicata.

1. Suit for certificate of sale after dismissal of suit for reversal of annulment and for confirmation of sale was held to be —.—W. R. F. B. 28 (1 Hay 168, Marshall 96).

2. An adjudication by the Calcutta Small Cause Court must be treated as — in a Zillah Court.—S. C. C. 59.

3. A suit for damages for breach of contract in 1862 is not barred under s. 2 Act VIII of 1859 by the dismissal of a former suit for damages for breach of contract in 1861, the breaches of contract in the two years being different causes of action.—S. C. C. 80.

4. A sued B and C for rents and obtained a decree. In execution a compromise was effected between A and B, and the latter afterwards purchased the decree in favor of A *benamee*, and executed it against the property of A. In a suit by the representative of A to recover the money realized under that execution, it was held that the former suit was no bar, under s. 2 Act VIII of 1859, to the present action.—1 Hay 160.

5. A former suit between the same parties was brought to recover possession of land with *wasilat*, and the plaintiff obtained a decree for possession and *wasilat* from the date of the plaint. He now sued for *wasilat* from date of dispossession to date of plaint. *Held* that the present suit was barred under s. 2, a second suit under such circumstances being permitted only on clear proof that, from negligence, inadvertence, or other cause, the matter of that suit was wholly overlooked in the first suit.—1 Hay 160 (Marshall 93).

6. Where the Court held that misappropriation had taken place but dismissed the suit because the plaintiff was unable to prove to what extent misappropriation had gone, inasmuch as he had sued for a specific amount, he was held debarred from opening the question again.—2 Hay 352.

7. Where a suit against several defendants for a joint jumma is dismissed on the ground that the jumma is several and not joint, the plaintiff is not precluded by s. 2 from afterwards suing each of them severally for the separate jumma.—2 Hay 528 (Marshall 418).

8. A suit was brought in the Revenue Court to set aside an attachment for rents, on the ground that such attachment was for rent at a higher rate than was due. The landholder claimed the higher rate under an alleged assessment of a Butwarra Ameen. The Collector made a decree setting aside the attachment on the ground that the landholder failed to prove that the higher amount was due. *Held* that the landholder could not maintain a suit in the Civil Court to assess the land at the higher rate claimed for the year for which the attachment had issued, on the ground of prior service of notice of demand of the higher rate, under Reg. V of 1812, that question having been already adjudicated upon by a Court of competent jurisdiction.—Marshall 638.

9. In a suit to recover possession of a certain sheet of water formed by a river, the first Court declared the plaintiff entitled to possession of the soil, but adjudged the right of fishing to the defendant on the ground of the right of fishing in the river having been formerly decreed to him by a competent Court. The Lower Appellate Court reversed the second part of the decision. *Held* on special appeal that the question of fishing in the river was a —, and that as the water had been formed from the river, the defendant had a right to follow the fish therein.—L. R. 24.

10. According to s. 2 Act VIII of 1859, a decree in favor of some co-heirs does not bar the trial of a suit by other co-heirs for a similar cause of action.—Sev. 80*a*. *See also* 15 W. R. 309.

11. A suit by a brother's grandsons, after the death of the intervening widow, claiming inheritance of her husband's estate, is not barred under s. 2 Act VIII of 1859 by a former unsuccessful suit brought by their father or the guardian of their father against the widow for the estate in question as being the estate of a member of a joint Hindoo family.—Sev. 358.

12. The dismissal of a suit for want of evidence is a decision on the merits and not on default, and is therefore a bar to a fresh suit under s. 2 Act VIII of 1859.—Sev. 482, 23 W. R. 58.

But a dismissal on default is not a bar.—14 W. R. 81. *See* 50 *post*.

13. A suit will lie for plaintiff's rights under a deed of mortgage, although a former suit for the same property, brought on the allegation that it was a deed of sale, was dismissed without permission to plaintiff to bring a new suit.—W. R. Sp. 110.

14. A case struck off on the ground of discrepancy between the plaint and the plaintiff's deposition cannot operate as a —.—W. R. Sp. 163.

15. A decision in a former case in which a mere question as to the use of the water in a water-course arose, cannot operate as — when the subject-matter is whether defendants have the right of throwing up an embankment and obstructing the waterway.—W. R. Sp. 167.

16. The dismissal of B's suit against A for a balance said to be due in respect of advances made to A and his brothers on account of indigo, is no bar to the institution of a suit by A to recover the proceeds of indigo consigned to B.—W. R. Sp. 245 (L. R. 19).

17. To plead — under s. 2 Act VIII of 1859, the parties or their representatives, the subject-matter, and the cause of action, should be the same.—W. R. Sp. 320 (L. R. 97); 1 W. R. 121, 9 W. R. 393.

Whether some of the parties are merely trustees for the others or not.—10 W. R. 457.

S. 2 Act VIII cannot prevent the operation of the general law relating to — founded on the principle "*nemo debet bis vexari pro eâdem causâ*," according to which, where a question has been decided between parties to a suit, they cannot raise the same question as between themselves in any other suit.—(P. C.) 20 W. R. 377, 25 W. R. 1.

18. Where a suit for rent due on a putnee lease is dismissed in the Revenue Court, another suit cannot be brought for damages in the Civil Court.—W. R. Sp. (Act X) 82.

19. S. 16 Reg. III of 1793 applicable to what cases.—(P. C.) 3 W. R., P. C., 11 (P. C. R. 570).

20. The decision in a former suit as to the right of enhancement is a — in a subsequent suit for enhanced rent.—1 W. R. 167.

21. A suit to recover from co-sharers a share of the surplus proceeds of a sale in execution for arrears of rent, is not barred by a former suit instituted by the plaintiff on the requisition of the Collector for obtaining a declaration of his right to share in the fund then in the Collectorate.—1 W. R. 199.

22. That a ryot's holding was of a date prior to 1790, once decided in a suit brought by the zemindar under s. 28 Act X of 1859, is a — in a subsequent suit brought under s. 30 Reg. II of 1819.—1 W. R. 218.

23. The matter of a suit dismissed in the presence of both parties, for want of documentary evidence, is a —.

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S. 54 Act X does not apply to such a case.—1 W. R. 343, 3 R. J. P. J. 350. *See also* 18 W. R. 402.

24. What constitutes a —.—3 W. R. 39, 5 W. R. (Act X) 3, 14 W. R. 412, 15 W. R. 573, 20 W. R. 144, 21 W. R. 57, 109, 189.

25. A mortgage declared to be invalid cannot form the basis of another suit.—3 W. R. 210.

26. Withdrawal from a former suit for possession is no bar, under s. 2 Act VIII, to a subsequent suit for resumption.—3 W. R. (Act X) 18.

27. A former judgment proceeding wholly on a technical defect or irregularity, and not upon the merits, is not a bar to a subsequent suit for the same cause of action.—3 W. R. (Act X) 140, 15 W. R. 208.

28. Waiver and revival of plea of —.—3 W. R. (Act X) 146.

29. S. 2 Act VIII does not bar a suit to enforce a joint liability under a bond against several debtors, when the object of the former suit was to make one of such persons alone liable.—4 W. R. 50.

30. A plaintiff who has been declared to have a joint right in a *chundee mundul* for *poojah* purposes, cannot sue again for a declaration of his right to occupy one-half.—5 W. R. 90.

31. If in a former suit against a party and his vendee, in which an intervenor was made a defendant, plaintiffs obtained a decree with a reservation of intervenor's rights, the decree was not a — in the present suit by a purchaser from the intervenor against the said vendee, the reservation being a mere *obiter dictum*.—5 W. R. 227. *See also* 18 W. R. 61.

32. A possessory suit under cl. 6 s. 23 Act X by a ryot against his zemindar cannot bar a suit for confirmation of title by the intervenor in that suit.—(*Over-ruling* 5 W. R. (Act X) 9) 7 W. R. 469.

33. A decision in a suit under Act X against defendants as tenants, will not, under s. 2 Act VIII, bar a suit in the Civil Court against the same defendants as purchasers; the parties being accidentally the same, but legally different with different rights and interests.—5 W. R. (Act X) 9.

34. *Quære.* Whether the dictum of a Revenue Court under Act X with reference to the *bona fides* or otherwise of a pottah is in any way binding upon a Civil Court in a suit in which the *bona fides* of the pottah is put in issue.—5 W. R. (Act X) 61.

35. The claim of a brother's son as heir to the moiety of an estate under a title prior to that of his uncle's widow, and the claim of the same party as heir next in reversion after the widow, imply two essentially different causes of action; the former cannot bar the latter as —.—6 W. R. 44.

36. A suit for mesne profits is not barred under s. 2 Act VIII, although in a previous suit for possession and mesne profits plaintiff got a decree for possession only, no issue having been raised as to mesne profits.—6 W. R. 78, 10 W. R. 486, 13 W. R. F. B. 15.

37. The Tipperah Rajah's Court is a Court of competent jurisdiction within the meaning of s. 2 Act VIII. A decision given there bars a fresh suit in respect of the same matter in a British Court.—6 W. R., C. R., 31. *See contra* 10 W. R. 337.

38. A person who buys with her eyes open *pendente lite* cannot maintain a suit involving a revival and retrial of the very question decided in her vendor's suit.—7 W. R. 102.

39. A suit which was brought by A against B and C and dismissed, cannot be pleaded as — in a subsequent suit brought by B against C.—7 W. R. 181.

40. Five brothers, A, B, C, D, and E, executed an *ikrar* by which talook N and others were to remain in the possession and under the management of A. On A's refusal to give his brothers their shares of the profits, they sued separately and obtained decrees against him for the amount due to them. A's son now sued B for the arrears which his father was compelled under the *ikrar* to pay his other brothers, on the allegation that B alone was in possession of talook N and appropriated the rents wrongfully; and it was held that the present suit was not barred by the former suits under the *ikrar*, except so far as B's share in talook N was concerned.—7 W. R. 188.

41. A suit struck off by reason of the defendant being in jail on a criminal charge, cannot be set up as — in a subsequent suit; nor can it be treated as a case of withdrawal under s. 97 Act VIII.—7 W. R. 236.

42. A suit to establish plaintiff's right to a share of ancestral property cannot operate as a — in a subsequent suit to recover possession of a part of the same property from which plaintiff was evicted during the pendency of the former suit.—7 W. R. 423.

43. A decree for a plaintiff is binding on defendants collectively and severally, although any of them be only *pro formâ* defendants; and no matter in the issue of the suit between them can be raised in a subsequent suit.—9 W. R. 366.

44. Where certain property was sold in execution of a money-decree against the representative of a mortgagee, and a suit was brought and a decree obtained to set aside the sale as being one of land in which the mortgagee had no interest, a subsequent suit by the holders of the money-decree to obtain a declaration that the said property was liable to be sold in satisfaction of the said decree, was held to be barred by s. 2 Act VIII.—9 W. R. 300.

45. A suit on the same cause of action and between the same parties as a former suit which was summarily dismissed without being tried on its merits, is not a suit in a cause of action which has been "heard and determined by a Court of competent jurisdiction in a former suit" under s. 2.—9 W. R. 327.

46. The decreeing of a debt sued for against a firm after dissolution of partnership on a division of assets and liabilities, is not a — as between two parties, one of whom sues the other for his share of the property sold in execution.—9 W. R. 557.

47. A Collector's refusal to give assistance under s. 25 Act X is not a determination by a Court of competent jurisdiction in a former suit within the meaning of s. 2 Act VIII.—10 W. R. 6, 295.

48. A suit to recover possession, as part of her own talook, of land which plaintiff had claimed in a former suit as *towfeer* reclaimed and occupied, is barred by s. 2 Act VIII.—10 W. R. 426, (*affirmed by P. C.*) 18 W. R. 163. *See* 12 W. R. 55, 13 W. R. 209, 22 W. R. 464, 24 W. R. 301.

49. Where plaintiff sued for possession of an estate purchased from L during the pendency of a suit on the part of L against his vendor G for confirmation of possession, which latter suit was dismissed for default, the cause of action in the two suits was held to be not the same.—11 W. R. 193.

50. A dismissal for default under Reg. XXVI of 1814 is not a decision such as is contemplated by s. 148 Act VIII, and cannot be pleaded as — under s. 2.—11 W. R. 250.

So also a dismissal for default generally.—14 W. R. 81, 24 W. R. 114.

51. Plaintiff's failure in a former suit to prove his claim to a different property, does not bar the present suit under s. 2 Act VIII, even though the title set up in both suits is identical.—11 W. R. 382.

52. Where plaintiff had obtained a decree for rent in a suit in which defendant's surety, from whom a bond had been taken, was made a nominal defendant,—*Held* that his present suit against the surety was not barred by s. 2 Act VIII, being on a bond never previously before a Court.—11 W. R. 407.

53. A previous decision against one member of a joint Hindoo family suing to recover his own share, is no bar under s. 2 Act VIII to a suit by a receiver in the name of the whole family.—12 W. R. 117.

54. By taking up in its appeal stage a suit by a deceased Hindoo widow (the life tenant in an ancestral estate) to set aside an agreement transferring a share to her granddaughter, a reversioner is not barred, under s. 2 Act VIII, from suing himself to set aside the same agreement.—12 W. R. 234.

55. The reservation by a Court in India in a decree in a former case, giving the plaintiff liberty to bring a fresh suit, does not prevent the Court, when such fresh suit is brought, from entering into the question of —.—(P.C.) 12 W. R., P. C., 43. *But see* 16 W. R. 276, 23 W. R. 345.

56. A suit to recover money due as shown by plaintiff's account books is not barred, under s. 2 Act VIII, in consequence of the failure of plaintiff's previous suit to recover the money upon a bond.—13 W. R. 97.

57. The dismissal of a suit for enhanced rent does not

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bar a suit for rent at the rate admitted by the defendant.—13 W. R. 317.

58. In a former suit to recover property which plaintiff had purchased, he failed as to a portion which had been previously purchased by one of the defendants who held a sale certificate thereof. Plaintiff's present suit to get rid of that sale was held to be different from the former suit and not barred by s. 2 Act VIII.—13 W. R. 343.

59. Where in a suit under cl. 6 s. 23 Act X the Collector restored plaintiff to possession, the question between the parties in a subsequent suit in the Civil Court was a —.—13 W. R. 417. *But see* (F. B.) 19 W. R. 322.

60. In a suit to recover possession of land occupied by Municipal Commissioners, a decision in a similar suit brought by a sharer in which the present plaintiff was a *pro formâ* defendant is not binding as to any right plaintiff may have with regard to the land.—13 W. R. 461.

61. A suit by reversioners against a childless widow as being without title, where the answer was that she had title as next of kin to her brother, was held to be no bar under s. 2 Act VIII to a suit, on the widow's death, by the same plaintiffs to obtain possession of the same lands held by defendant as the widow's adopted son.—14 W. R. 73.

62. Where a plaintiff's claim to have a property declared *ijmalee* was dismissed in a former suit, his suit for a partition of the same property was held to be barred against a defendant who was a party to that suit, as well as against defendants who are not in possession.—14 W. R. 195.

63. A decision of a Collector under cl. 6 s. 23 Act X, in which he had no jurisdiction to go into the rights of the parties, is no bar to a suit in the Civil Court to determine the rights of the parties.—14 W. R. 301.

64. An adjudication of title by gift bars a subsequent claim by title on inheritance.—15 W. R. 168.

65. A suit for possession as the heir of S is not barred by s. 2 Act VIII because plaintiff's claim to the same property as the heir of S's father was dismissed.—16 W. R. 264.

66. The dismissal (for want of proof of kubooleut) of a suit for enhanced rent of land alleged by defendant to be lakheraj, does not bar a suit for declaration of plaintiff's title to the land as *mâl*.—17 W. R. 184.

67. A former judgment deciding that plaintiff had no cause of action cannot operate as a — under s. 2 Act VIII.—17 W. R. 381.

68. The dismissal of a suit for rent is no bar, under s. 2 Act VIII, to a subsequent suit for mesne profits for the same period.—17 W. R. 387.

62. The plea of — was held to apply where a question raised in the present suit was decided in a former suit wherein plaintiff's mother had appeared as his guardian, and it was presumed that she had the Court's permission so to appear.—17 W. R. 492.

70. S. 2 Act VIII does not bar a suit for ejectment and khas possession because plaintiff had in a former suit obtained a declaration that the land was his *mâl* land and not defendant's lakheraj.—18 W. R. 19.

71. S. 2 Act VIII does not apply where the present plaintiff's name was ordered to be expunged from the list of defendants in a former suit but appeared notwithstanding by some mistake some two years afterwards in the decretal orders, the *onus* being on the present defendant to prove that the former suit was decided in the present plaintiff's presence.—18 W. R. 29.

72. A decree in a suit by a member of a joint Hindoo family, declaring her right to a share of certain bond-debts due to the joint estate, is no bar, under s. 2 Act VIII, to a subsequent action for a share of moneys realized upon those debts, a fresh cause of action accruing from the time of appropriation.—18 W. R. 202.

73. In a suit against the vendor to declare plaintiff's right to a share of the property alleged to be sold, plaintiff obtained a decree directing his share to be taken out of a certain *puttee*. Pending the suit plaintiff became a party to certain *butwarra* proceedings, but omitted to include his claim or to withhold his consent till it was ascertained what he was entitled to. *Held* that he could not bring a second suit against the same parties to establish the same right.—18 W. R. 260.

74. A party getting a judgment in a suit on a joint but not several contract, is prevented by s. 2 Act VIII from bringing a fresh suit against the persons jointly liable with the defendant but not included in the former suit.—18 W. R. 458.

But the dismissal of a suit on the ground of defect of parties is not a decision on the merits within the meaning of s. 2 Act VIII.—21 W. R. 272.

75. A suit to set aside the alleged adoption of defendant in which the adopting mother was made a party, was held barred by s. 2 Act VIII because the same issue (*i.e.* the validity or otherwise of the adoption) had been tried, not incidentally or collaterally, but substantially, in former suits, between the same parties, as to a portion of the property now at issue.—19 W. R. 62.

76. A landlord who fails to establish his right to get rent is not thereby prevented under s. 2 Act VIII from bringing a suit to get possession of the land.—19 W. R. 97.

And so (conversely) a suit for khas possession is no bar to a later suit for rent of the same land.—23 W. R. 253.

77. A party obtaining a decree for possession and failing to execute it, is precluded from bringing a second suit against the defendant for possession of the same property, unless upon a cause of action which has arisen since the decree was passed and which is not itself barred by limitation.—20 W. R. 412.

78. A suit dismissed for and on the cause of misjoinder or multifariousness cannot be pleaded as — under s. 2 Act VIII.—21 W. R. 105.

79. A suit is not barred by s. 2 Act VIII by reason of a prior suit decided against plaintiff's father while plaintiff was a minor in which the father was sued in his personal capacity and in which plaintiff was not a party either actually or by representation.—21 W. R. 109.

80. The decision of an ordinary Civil Court in a suit for rent cognizable under Act VIII of 1869 (B. C.) is binding in a subsequent suit between the same parties which raises the same question in a different form.—21 W. R. 267.

It makes no difference that plaintiff in the subsequent suit asks for a declaration of his *mâl* right to the land which defendant occupies and which defendant pleads is lakheraj.—22 W. R. 362.

81. Plaintiffs having sued for possession of property mortgaged under a *zur-i-peshgee* lease, and obtained a decree for possession on their depositing the sum found to be due on the mortgage, delayed to apply for execution till 4 years afterwards, when they alleged that the money had been paid off by the usufruct of the land; and on their application being refused, they now sued for possession alleging that the debt had been discharged by the usufruct,—*Held* that the present cause of action, within the meaning of s. 2 Act VIII, was different from the former one, which was for the adjudication of the state of accounts between the parties up to a certain date, whereas the latter had reference to the accounts since that date.—22 W. R. 172.

82. A decree in a former suit for *putnee* rent, in which the amount payable was put in issue, was held to be a bar, under s. 2 Act VIII, to a subsequent suit for a declaration as to the amount of such jumma.—22 W. R. 282.

83. The fact that one of two defendants jointly and severally liable on a promissory note is excluded from a decree for want of jurisdiction, does not bar plaintiff from his remedy in a Court possessing jurisdiction with respect to the balance of claim irrecoverable from the other defendant.—22 W. R. 290.

84. A suit for a declaration of plaintiff's right to a chur which they claimed as an accretion to mouzah L, was held to be barred, under s. 2 Act VIII, by a judgment in a former suit in which they had claimed the same land as accretion to mouzah R, because, whether by accretion to the one estate or to the other, the question in both suits was that of title by accretion.—22 W. R. 464.

85. A decree in a suit for a share of ancestral property, modified in appeal as regards certain immoveables so far as to declare plaintiff's right to a specified share without any specific declaration of value, is no bar under s. 2 Act VIII to a subsequent suit for the value of the moveables.—24 W. R. 23.

86. K died leaving a widow M as his heir. M also died leaving a will in favor of B, who accordingly applied for letters of administration with the will annexed. This application was refused by the District Judge who granted a certificate under Act XXVII of 1860 to one G; where-

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upon B sought his remedy in a suit before the Subordinate Judge, who held that the property being that of the husband, the widow's will passed nothing to plaintiff, and that, although the evidence in favor of G being the husband's heir was doubtful, yet the Court could not say that he was not the heir. G now sues B for the rents of the property accruing since the widow's death, contending that the Subordinate Judge's decision operated as a bar to the questioning of his title. *Held* that the principle of — did not apply.—24 W. R. 111.

87. A suit to recover possession of land on the ground of purchase from the admitted owners is not barred by s. 2 Act VIII, simply because plaintiff's claim as against the same defendant was dismissed in a former suit in which he (defendant) appeared as an intervenor.—24 W. R. 248.

88. A plaintiff is bound to raise every title on which he can succeed, and to obtain a decision upon every part of his case; and if it is found that any part of the case which he made has been neglected by the Court which tried the suit, he is not at liberty to bring a fresh suit in respect of such part.—24 W. R. 304.

89. Where a suit for right of way was once thrown out on the specific ground that, according to plaintiff's own statement, the road in suit was a public one and that the Court had no jurisdiction,—*Held* that, as the real cause of action, viz. the obstruction of the road, was not decided in the first trial, s. 2 Act VIII did not bar a second suit for the removal of the obstruction.—25 W. R. 208.

90. Where a Moonsiff, in a suit for rent at an enhanced rate, declared that the tenure was not protected from enhancement, but finding that the grounds upon which enhancement was claimed were not established, gave a decree for rent at the old rate, the finding of the Moonsiff that the tenure was not protected from enhancement, whether such finding was contained in the decree or not, was held to be conclusive in a subsequent suit brought to recover rent at an enhanced rate.—25 W. R. 225.

91. Where a mother, in her capacity of guardian of minor sons, unsuccessfully sued a certain party to set aside certain *kubalas* by which she had conveyed away to him the property of her late husband, on the ground that her act may have been injurious to the interests of her sons, a subsequent suit by the sons with substantially the same object in view, was held barred on the principle of —.—25 W. R. 366.

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Resumption.

1. A suit for — of a lakheraj tenure under s. 28 Act X of 1859 will not lie upon the ground that the tenure is invalid, but merely upon the ground that the lakheraj was granted after 1st Dec., 1790; and the *onus probandi* in such a case is on the plaintiff.—(F. B.) W. R. Sp. 81 (2 Hay 276, Marshall 301).

3. Defendant A was lakherajdar of 18 villages, out of which he made a gift of the lakheraj of 3 villages to defendant B, who gave one of them on a mokurruree tenure to plaintiff's ancestor. The 18 villages were subsequently resumed by Government from A, who ultimately recovered them by appeal to the Privy Council. Intermediately between the — and the final release, the Government had made a summary settlement of the 18 villages with A, who gave B a putnee of the 3 villages with a promise of the restoration of the lakheraj should the appeal to the Privy Council be successful. After the decision of the Privy Council A received his mesne profits from the Government for the time of dispossession. Plaintiff now sued for recovery of his mokurruree rights and possession with mesne profits. *Held* that plaintiff was entitled to possession with mesne profits from the date of the Privy Council's decree, but that, as to the period antecedent thereto, no wrong had been done to plaintiff either by A or B but by the Government, and that the Government might have been sued by any person injured by its acts of unlawful —.—1 Hay 13.

4. The special — laws are not applicable to a case in which the Revenue authorities act as private agents for a zemindar. Such a case is not barred by limitation under s. 21 Reg. II of 1819 and Reg. IX of 1825.—1 R. J. P. J. 229 (Sev. 794).

5. The competency of the Soonderbund Commissioner to make resumptions, and the inapplicability of Reg. II of 1819 to such a case, is not a point to be raised for the first time in oral argument on appeal. The case having been dealt with as one under that Regulation, is barred as not brought within one year from the date when plaintiff was referred to a civil suit.—1 R. J. P. J. 230 (Sev. 806).

6. A zemindar is not entitled to resume lands in excess of 100 beegahs not held under different sunnuds. In order to start a suit for possession or assessment under s. 10 Reg. XIX of 1793, plaintiff ought to make out a *primâ facie* case at the commencement of the rent-free holding after 1790.—1 R. J. P. J. 231 (Sev. 875).

7. A decision of a Collector under s. 28 Act X of 1859 can be questioned in a regular suit for —.— 2 R. J. P. J. 146.

8. A grant made since December 1790 and not sanctioned by the Governor-General in Council, is, as declared by s. 10 Reg. XIX of 1793, of itself null and void, and consequently liable to —.—L. R. 159.

9. Reg. II of 1819 is intended for the assessment of *lands* claimed to be rent-free under invalid titles, and not for the right of property of the State in large navigable rivers.—Sev. 373.

10. The right of Government to institute — proceedings under Reg. II of 1819 is barred by cl. 2 s. 2 Reg. II of 1805 after the lapse of 60 years.—(P. C.) Sev. 391.

11. To bar a zemindar's right to resume, under s. 30

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Reg. II of 1819, lands in excess of 100 beegahs, it must be shown that the lands are held under a sunnud in excess of 100 beegahs, or under different sunnuds each in excess of that quantity.—W. R. Sp. 132.

12. Where land beyond 100 beegahs is admittedly held by a lakherajdar, the presumption is that it is held under one grant, and that it is resumable by Government and not the zemindar. In order to rebut the presumption, the zemindar must show that the land, though beyond 100 beegahs, is held under different sunnuds.—W. R. Sp. 145.

13. Talookdars have no legal right to sue for — of areas containing more than 100 beegahs of land.—W. R. Sp. 156.

14. A zemindar is not precluded by Reg. XIX of 1793 from suing for the — of invalid lakheraj lands exceeding 100 beegahs held under several sunnuds, provided none of them singly is for more than 100 beegahs.—W. R. Sp. 217.

15. The release of invalid lakheraj land from the claim of Government to resume on the ground of its being under 50 beegahs, does not bar the zemindar's right to resume it. —*Ib.*

16. Right of zemindar to intervene in suit by Government for — of invalid lakheraj land held by a Mohunt.—(P. C.) 3 W. R., P. C., 45 (P. C. R. 325).

17. Finality of decree of Special Commissioners under Reg. III of 1828.—(P. C.) *Ib.* *See also* 11 W. R., P. C., 14; 13 W. R. 180.

18. Grants for tanks are invalid and resumable by a zemindar.—1 W. R. 6.

19. In a suit for — of lakheraj lands, plaintiff must show that the lands held by defendant are rent-paying, and that if defendant holds them as lakheraj, he does so on a grant of date subsequent to his pottah; if prior thereto, valid or invalid, the plaintiff is estopped by the terms of his pottah from resuming them.—1 W. R. 25.

20. In a suit for — of invalid lakheraj, the *onus* is on defendant to prove the validity of his title, and if he does not appear, on proof of the notice having been served upon him, a decree should pass in favor of plaintiff.—1 W. R. 164.

21. Under Act XIV of 1859, neither zemindar nor auction-purchaser can resume land held from before 1790.—1 W. R. 248.

22. In a suit for — where defendant pleads a lakheraj tenure before 1790, the validity of the grant is not open to the Judge's consideration, but only whether the tenure was in existence before 1790; if so, the law of limitation applies. —1 W. R. 249.

23. The release by Government of land under 50 beegahs is no bar to its — by the zemindar as invalid lakheraj.—2 W. R. 42.

24. In a suit for —, where defendant gives direct evidence of possession for only a few years short of 1790, a possession prior thereto may be inferred from collateral facts and other evidence.—2 W. R. 135.

25. Under s. 6 Reg. XIX of 1793 the zemindar may sue to resume lands held rent-free on invalid titles under 100 beegahs.—2 W. R. 279.

26. In a — suit, only the validity or the invalidity of the lakheraj, and not the quantity of land is decided.—2 W. R. (Act X) 35.

27. A zemindar is not precluded from resuming lakheraj land situated in a dependent talook, though such dependent talookdar has no right to resume.—4 W. R. 42.

28. An auction-purchaser cannot resume lands held under an alleged lakheraj title, which had been unchallenged since 1793, from which date possession may be easily traced back beyond 1st December 1790.- 5 W. R. 191. *But see* 25 W. R. 209.

29. A landlord is not bound to sue for — before bringing a suit for a kubooleut in respect of lands which the defendant claims to hold as lakheraj.—7 W. R. 169.

30. One lakherajdar cannot maintain a suit for — against another, and force the latter to prove his title.—7 W. R. 362.

31. Where the legality of a — proceeding was held not affected by the omission to give the warning mentioned in s. 16 Reg. II of 1819.—13 W. R. 180.

32. In — proceedings it is not necessary to give notice to a party not in possession, or to make him a formal party to the suit.—22 W. R. 48.

See **Amaram Grants 1.**
Auction-Purchaser (Revenue Sale) 4, 11.
Bhoomear Tenure 1.
Cause of Action 10.
Chakeran Land 3, 6.
Churs 1, 17, 80.
Co-sharers 31.
Costs 33.
Damages 58.
Ejectment 5, 47.
Enam Grants 2.
Endowment 21, 72.
Enhancement 29, 198.
Ghatwals 7, 8, 12, 14, 15, 16, 17, 22, 24, 26.
Howala 1.
Jungleboore Tenure 7.
Jurisdiction 6, 7, 32, 56, 60, 63, 86, 155, 177, 209.
Kubooleut 58.
Lakheraj 2, 3, 6, 8, 9, 12, 13, 14, 15, 16, 17, 21, 22, 27, 28, 82, 84, 85.
Limitation 6, 28, 29, 34, 69, 84, 91, 100, 101, 146, 247.
" (Act XIV of 1859) 12, 20, 40, 65, 79.
Maintenance Grant 1.
Measurement 11, 24.
Mokurruree Tenure 28.
Mortgage 65.
Notice 23.
Nowabad 2.
Onus Probandi 6, 9, 87, 96.
Pacheet.
Possessory Award 1.
Practice (Possession) 20, 22.
Putnee Talook 3.
Refund 1.
Rent 29, 54, 58, 84.
Res Judicata 22, 26.
Right of Property 7.
" to sue 11.
Service Tenure 3, 9.
Settlement 4, 10, 11, 13, 22.
Stamp Duty 37.
Tipperah 4.
Title 4, 16.
Under-Tenures 4.

Revenue.

See **Abatement 14.**
Contribution 9, 10, 10*a*, 11, 12, 14, 23.
Co-sharers 19, 22, 59.
Costs 5.
Enhancement 55.
Escheat 4.
Evidence (Estoppel) 99.
Gift 48.
Income Tax.
Information 2.
Instalments 15.
Interest 2, 13, 85.
Jurisdiction 103, 159, 210, 460, 509.
Limitation (Act XIV of 1859) 90, 246, 272.
Majority 1, 2, 4, 5.
Mesne Profits 97.
Mokurruree Tenure 1.
Mortgage 61, 63, 65, 117, 132, 137, 138, 151, 241.
Onus Probandi 51, 274.
Partition (Butwarra) 1, 33, 37.

REVENUE (*continued*).

See **Payment 4.**
Pre-emption 16.
Putnee Talook 17, 62, 73.
Receipt 1, 2.
Refund 1.
Registration 63.
Remission 1.
Rent 54.
Revenue Agent.
Reversioner 18.
Sale 34, 47, 150, 240.
" Law.
" " (Act I of 1845).
" " (Act XI of 1859).
Salt.
Set-off 3.
Settlement.
Special Appeal 25.
" Commissioner.
Stamp Duty.
Sub-lease 2.
Under Tenures 4.
Zemindar 1, 2, 5.

Revenue Agent.

See Evidence (Presumptions) 26.

Reversioner.

1. — bound to explain delay in enforcing his rights.—W. R. F. B. 106.

3. Suit for past mesne profits by Receiver who was also —.—S. C. C. 26.

4. — cannot sue for damages until the widow's (the life-tenant's) death.—*Ib.*

5. A — is not bound by any compromise effected by a Hindoo widow, and limitation will not run against him from the date of the compromise, but of the death of the widow.—2 Hay 477. *See also* 11 W. R. 183, 14 W. R. 146.

6. A — may be appointed to act as trustee of a Hindoo widow who has made alienation without legal necessity.—2 Hay 582.

7. A — cannot sue upon some contingent and uncertain right which may never accrue to him (as for a declaration of his right to succeed after the death of the tenant for life) but upon some positive right.—2 Hay 608, 9 W. R. 460. *See also* 16 W. R. 18, 24 W. R. 86.

8. The immoveable property of a Hindoo widow was sold under a decree against her, and A was the purchaser at the sale. Afterwards and during the lifetime of the widow, the lands in question were sold for arrears of revenue due by A to Government in respect of other lands, and B was the purchaser at the sale. C, the —, sued in her lifetime to set aside the sales of the estate; but this suit was dismissed under s. 24 Act I of 1845 on the ground of limitation. After the widow's death, the — sued B for recovery of possession of the lands. *Held* (1) that the widow's life-estate was alone acquired by the purchaser at the sale under the decree, and sold at the sale for arrears of Government revenue; and that interest having expired, the — was entitled to recover possession of the lands; (2) that the plaintiff was not barred by the dismissal of the suit instituted in the widow's lifetime, the object of that suit being to set aside the assignments of the widow's interest, and not for the assertion of the plaintiff's right to the reversion.—2 Hay 646 (Marshall 539).

9. A reversionary contingent interest subject to the life-estate of a Hindoo widow may be assigned. The assignee of such an interest is entitled to restrain the widow from committing waste.—Marshall 622.

10. Defendants urged that plaintiffs were not the reversioners of the widow, who had inherited not from her husband but from her sons. But as it appeared that, if plaintiffs were born before the widow's late husband's death, they would still be reversioners, and defendants had not specifically met plaintiffs' averment that they were reversioners, or brought evidence thereupon, the High Court on appeal refused to listen to their objection.—L. R. 170.

11. In a *quia timet* suit by a — against the daughter of an intestate Hindoo in possession of personalty,—*Held* that a Court of Equity would not interfere unless upon proof of danger from the mode in which the tenant for life in possession was dealing with the property.—(P. C.) Sev. 664*a*.

12. A person having only a contingent estate during the lifetime of a Hindoo widow, is permitted to sue simply on the ground of the necessity that the contingent — may be under of protecting his contingent interest.—(P. C.) 7 W. R., P. C., 25 (P. C. R. 681).

13. Rights of — in ancestral property how affected by sale made by Hindoo widow without necessity, or by Government for recovery of revenue.—1 W. R. 47.

14. A — has no right of suit, during the lifetime of a widow, to set aside an alleged deed of alienation said to have been executed by his ancestor but alleged to be fabricated.—1 W. R. 338.

15. A reversioner's cause of action in a suit for possession of ancestral property accrues from the death of the life-tenant.—1 W. R. 347, 2 W. R. 244, 8 W. R. 519. *See* (*F. B.*) 9 W. R. 460, 505.

16. A suit by a — to set aside an alienation is cognizable if the title of the — has been injured by a distinct act of alienation, and if the widow who ought to have brought the suit has relinquished her life-interest and signified her assent to the suit proceeding.—1 W. R. 359.

17. The rights of a — entitled to succeed on the death of a childless Hindoo widow, cannot be sold in execution of a decree under s. 205 Act VIII.—6 W. R. 34, 15 W. R. F. B. 17. *But see* 12 W. R. 54.

18. The fact of a — being an attesting witness to a conveyance by a Hindoo widow, is an acquiescence on his part which precludes him from impeaching the sale on the ground of waste.—6 W. R. 52.

19. A decree against a Hindoo widow for a loan to pay Government revenue is binding on a —.—*Ib.*

20. A reversioner's cause of action against his ancestor's lessee does not accrue until the expiration of the lease, unless the — is evicted or deprived of his rent, or rent is received adversely to him by a stranger from the lessee.—8 W. R. 135.

21. A — suing to set aside alienations by the widow in possession, wrongly sought immediate possession, and the Lower Court decreed only such relief as the — was entitled to. The course adopted by the Lower Court not being made the ground of appeal to the Judge, the High Court refused in special appeal to set aside the decree.—10 W. R. 133.

22. A — whose rights are inchoate and imperfect cannot sue to set aside improper alienations by a Hindoo widow.—10 W. R. 301.

23. Under what circumstances a — may without showing absolute fraud on the part of a Hindoo widow sue for possession during the lifetime of the widow.—(F. B.) 9 W. R. 505, 14 W. R. 322, 17 W. R. 11, 19 W. R. 419.

24. A suit by a — to restrain a widow or other Hindoo female from acts of waste, although his interest during her life is future and contingent, must be brought with that object and for that purpose alone, and the question to be discussed would be solely between him and her; he could not, by bringing such a suit, get, as between him and a third party, an adjudication of title which he could not get without it.—(P. C.) 23 W. R. 314.

25. In a suit by a — to set aside an alienation of ancestral property, where plaintiff questioned the acts of alienation effected jointly by his father and aunt, plaintiff was held entitled to maintain the suit even though his father, and not he, was the immediate —.—24 W. R. 399.

See **Compromise 18.**
Declaratory Decree 1, 3, 4, 18, 32, 46.
Endowment 68.
Evidence (Estoppel) 12.
" (Presumptions) 10.
Forfeiture 9.
Heir 1.

REVERSIONER (*continued*).

See Hindoo Law (Adoption) 37, 47, 53, 54.
„ „ (Alienation) 9.
„ „ (Inheritance and Succession) 14, 107.
„ Widow 1, 5, 8, 13, 16, 17, 18, 19, 31, 34, 47, 49, 59, 66, 73, 81, 87, 91, 93, 96, 102, 106, 114, 115, 116, 118.
Husband and Wife 8.
Joinder of Parties 28.
Jurisdiction 30.
Limitation 3*a*, 7, 27, 36, 50, 62, 99, 103, 136, 151, 164, 173, 180, 207.
„ (Act XIV of 1859) 54, 55, 159.
Mokurruree Tenure 30.
Mortgage 284.
Onus Probandi 167, 168, 213.
Practice (Execution of Decree) 180.
Ratification 5.
Relinquishment 4.
Remoteness.
Res Judicata 54, 61.
Sale 142.
Waste 1, 3, 4.

Review.

See Practice (Review).

Revival of Complaint.

1. Where a Deputy Magistrate revived a complaint which he had dismissed by mistake, and the Magistrate without jurisdiction reversed the Deputy Magistrate's order of revival, the High Court set aside the whole of the proceedings and restored the case to the position in which it was before the order of dismissal.—8 W. R., Cr., 5.

2. A Magistrate of a district has power to order a Subordinate Magistrate to revive a case in which the accused has been discharged.—20 W. R., Cr., 46.

3. The Magistrate can, after the accused has been discharged, receive a complaint if he sees sufficient reason for doing so and make it over to a Subordinate Officer to be heard, but he has no power to make an order of remand directing the Joint Magistrate to proceed with the case at the stage at which he left it.—20 W. R., Cr., 47. *See also* 25 W. R., Cr., 31.

See Withdrawal of Complaint 8.

Revival of Decree.

See Cross Decrees 4.
Limitation (Act XIV of 1859) 31, 32, 33, 59, 60, 110, 313.
„ (Execution of Decree) 2, 8.
Practice (Attachment) 3*b*, 21*a*, 65.
„ (Execution of Decree) 4, 43, 132, 151, 172.
„ (Possession) 29.

Revival of Suit or Appeal.

1. The order of a Deputy Collector admitting a revival under s. 58 Act X of 1859 was final under s. 13 Act VI of 1862 (B. C.). The Collector was wrong in hearing an appeal from and reversing that order; and the Judge was also wrong in reversing the order of the Collector.—W. R. Sp. (Act X) 15 (2 R. J. P. J. 90), 3 W. R. (Act X) 135. *See* 11 W. R. 129.

2. Where an *ex-parte* decree has been passed by a Deputy Collector, a Collector has jurisdiction to revive the suit under s. 58 Act X of 1859, on an application made within 15 days after the sale in execution.—W. R. Sp. (Act X) 57 (2 R. J. P. J. 264).

3. Revival of suit by defendant, under s. 58 Act X, must be within 15 days of the first process which necessarily brings the *ex-parte* decree to his notice.—2 W. R. (Act X) 13 (4 R. J. P. J. 48).

4. On an application under s. 58 Act X for the revival of a suit decreed *ex-parte*, a Deputy Collector acts contrary to law if he cancels the original decree before the defendant has satisfied him that there are good and sufficient reasons for granting the application.—2 W. R. (Act X) 77.

5. The depositing of *tullubana* in a wrong Court is no ground for the revival of an appeal dismissed for want of prosecution.—3 W. R., Mis., 29.

6. The revival of a suit under s. 58 Act X does not reopen the case as regards all the defendants but only as regards the party who has applied to have his particular case revived and heard on the merits.—7 W. R. 237.

7. Every Court has the discretion to restore to its files any case which it has itself removed therefrom undetermined.—9 W. R. 283.

8. A Collector may alter or rescind an *ex-parte* decree passed by his predecessor when defendants apply under s. 58 Act X for a revival of the suit.—10 W. R. 156.

9. Before revival of a suit under s. 58 Act X, notice should be served upon the opposite party.—16 W. R. 135.

See Appeal 32, 103, 129, 202.
Limitation (Act LIII of 1860) 1.
Practice (Review) 80.
Privy Council 12.
Rehearing.
Representative 1.
Special Appeal 96.
Time 2.

Riding.

See Driving or Riding.

Rights.

See Arbitration 23.
British Subject 1.
Bunkur.
Churs 17, 61, 79.
Contribution 33.
Co-Sharers 37, 63*a*.
Declaratory Decree.
Easement.
Embankment.
Enhancement 285.
Evidence 89.
Ferry 1.
Gift 9.
Hindoo Law (Coparcenary) 90.
„ „ (Religious Ceremonies).
Hukeequt.
Jurisdiction 123, 124, 128, 300, 344, 391, 409.
Law 1.
Lease 50.
Limitation 243.
„ (Act XIV of 1859) 288.
„ (Act IX of 1871) 11.
Marriage 14.
Married Woman.
Milkeut.
Occupancy.
Partition 1, 9, 28.
„ (Butwarra) 5.
Partnership 80.
Payment into Court 2.
Phulkur.
Pilgrims 1.

RIGHTS (*continued*).

See Practice (Execution of Decree) 158.
,, (Suit) 41, 56.
Pre-emption.
Prescription.
Putnee Talook 4.
Re-entry.
Registration 83.
Relinquishment 20.
Res Judicata 63.
Reversioner.
Right of Appeal.
,, ,, Privacy.
,, ,, Private Defence.
,, ,, Property.
,, ,, Public.
,, ,, Reply.
,, ,, Water.
,, ,, Way.
,, ,, Worship.
,, to begin.
,, ,, examine.
,, ,, Light and Air.
,, ,, sue.
Sale 229.
Splitting Cause of Action 20.
Summary Trial 9.
Timber 3.
Title.
Trees 2, 4, 5, 6.
Unlawful Assembly 8.
Water.
Water-course.
Wrongs and Remedies.

Right of Appeal.

1. The — is not lost to a plaintiff whose suit is dismissed for default by reason of non-appearance as a witness.—5 W. R. (Act X) 65.

2. A person tried by a jury has a — on the facts if the offence was committed before the passing of the Penal Code.—6 W. R., Cr., 1.

3. There is no — because the united sentences in three separate cases amount to more than a month's imprisonment.—6 W. R., Cr., 51; 10 W. R., Cr., 3.

4. A defendant disclaiming right or interest in the land sued for is not thereby deprived of the — if judgment is given against him with costs.—10 W. R. 94.

5. The purchaser of a decree has a —.—10 W. R. 205. *But see* 15 W. R. 485.

6. The fact of a defendant in the first instance allowing the intervenor alone to appeal, does not debar him, when the case is re-opened by remand, from appealing in his own person.—15 W. R. 572.

7. The subsequent investiture of a Moonsiff with the powers of a Small Cause Court Judge under s. 29 Act VI of 1871 did not affect pending suits so as to take away any — which the parties to any suits might have had.—16 W. R. 227.

8. Risks and liabilities of purchasers of a —.—18 W. R. 438.

9. A *pro formâ* defendant against whom no judgment has been given has no —.—23 W. R. 86.

10. A person who is no longer a party to the suit has no — against a decree which does not affect him.—24 W. R. 259.

See Appeal 64*a*, 83, 84, 85, 87, 88, 90, 99, 101, 104, 109, 117, 148, 154, 170, 186, 194.
Certificate 70, 78.
Ex-parte Judgment or Decree 2, 3, 8, 25.
See Fraud 15.
High Court 121, 153.
Intervenor 46, 74.
Joinder of Parties 23.
Jurisdiction 200, 466.
Jury 25.
Lease 34.
Limitation 122.
Ministerial Officer 4, 5.
Onus Probandi 103.
Practice (Appeal) 93, 102.
,, (Attachment) 8*a*.
,, (Execution of Decree) 55, 111, 167.
,, (Parties) 25, 33.
Privy Council 1, 4, 11, 15, 19, 28, 53, 82, 86, 90.
Security 30.
Special Appeal 43, 49, 117.
Witness 40, 80.

Right of Occupancy.

See Occupancy.

Right of Privacy.

The — is not an inherent right of property, nor can it exist independently of prescription or grant or express local usage.—11 W. R. 103, 18 W. R. 11.

Right of Private Defence.

1. — not admitted in a case where a person, having reason to believe that he would be attacked, courted the attack.—W. R. Sp., Cr., 11 (2 R. J. P. J. 118).

2. In cases of hurt or grievous hurt, it should be ascertained who was the aggressor and whether the offence was committed in the exercise of the —.—2 W. R., Cr., 59 (4 R. J. P. J. 368).

3. — of property in a case of land dispute.—3 W. R., Cr., 41; 7 W. R., Cr., 112; 12 W. R., Cr., 43; 14 W. R., Cr., 69; 22 W. R., Cr., 51.

4. — not admitted in a case where the prisoner inflicted a blow which he must have known was likely to cause death.—6 W. R., Cr., 89.

5. — not admissible, on one side or the other, in a case of riot.—7 W. R., Cr., 31.

6. — not admitted in a case where the accused pursued after a thief and killed him after the house-trespass had ceased.—10 W. R., Cr., 9.

7. Where the — of person and property was held not to have been exceeded.—11 W. R., Cr., 41; 22 W. R., Cr., 51.

Where it was held to have been exceeded.—18 W. R., Cr., 29.

8. Where — of property was admitted.—12 W. R., Cr., 15.

9. Where it was not admitted.—13 W. R., Cr., 64; 14 W. R., Cr., 68, 74; 16 W. R., Cr., 75.

10. Where the — was admitted in a case of criminal trespass into a man's house with the object of having intercourse with his wife.—20 W. R., Cr., 36.

See Criminal Trespass 4.
Jury 26.
Murder 16.

Right of Property.

1. The purchaser of the *milkeut* and *hukeequt* rights of a proprietor acquires no other than proprietary rights.—3 W. R. 32. *See* 10 W. R. 212.

2. In the Mofussil Courts there is no distinction between legal and equitable —.—8 W. R. 399. *See* 11 W. R. 120, 15 W. R. 80.

3. Mode of determining a dispute as to the proprietary

RIGHT OF PROPERTY (*continued*).

rights of parties with whom a settlement has been made by the Revenue authorities, even if made on the ground of possession without title.—9 W. R. 376. *See* 12 W. R. 150.

4. Where a man is found exercising, on both sides of a boundary line, without objection, rights of ownership or incorporeal rights, and where it is not shown that there is any other owner of the soil, or that any objection to the exercise of such rights was made during a long course of years, his acts cannot be treated as the encroachments of a wrong-doer.—(F. B.) 9 W. R. 426.

5. A wrong-doer who has forcibly taken possession of another man's property is not entitled to withhold it for its lawful owner on the ground of a fraud which has in no way affected his own *status* or position.—15 W. R. 80.

6. In a suit to establish proprietary title, the fact of defendant's having obtained a decree in a suit under Act X on the ground that he was proprietor, and plaintiff only a ryot, was held to give the latter a distinct cause of action to show that he was the real proprietor.—15 W. R. 254.

7. A resumption-decree does not destroy the proprietary right of the lakherajdars. By obtaining a permanent settlement, they acquire no new right, a cause of action accruing to them if ousted before settlement.—15 W. R. 552.

8. The mere *assertion* of a — is not sufficient to justify an acquittal; the — must be *proved*.—15 W. R., Cr., 47.

9. Wild animals are the property of a man while they continue in his keeping or actual possession, or if, on making their escape, they are instantly pursued by the owner, for during such pursuit they remain his property.—21 W. R. 75.

See Auction-Purchaser (Execution Sale) 41.
Building 14.
Churs 62, 65.
Co-sharers 64.
Evidence (Presumptions) 25.
Ferry 4, 6.
Hindoo Law (Religious Ceremonies) 5.
Julkur 11.
Jurisdiction 471.
Land 2.
,, Dispute 57.
Limitation 153, 206.
Mahomedan Law 31.
Malikhana 2.
Practice (Attachment) 41*a*.
,, (Suit) 26.
Recognizance 22.
Right of Privacy 1.
Right to sue 2.
Sale 205.
Settlement 19, 21.
Under-Tenures 10.
Zemindar 8.

Right of Public.

The long use of a house by the public, with the consent of the proprietor, as a house of prayer, was held to entitle the public, by way of implied grant, to the occupation of it as such.—15 W. R. 505.

Right of Reply.

Where two prisoners were charged with distinct offences in the same indictment, the calling of evidence on behalf of one does not give the Crown a — upon the other.—2 Hyde 247.

See Practice (Appeal) 72.

Right of Water.

See Water.

Right of Way.

1. A — by sufferance over another's land cannot create a permanent right.—W. R. Sp. 293. *See* 16 *post*.

2. A, claiming a — over land taken possession of by B in execution of a decree, cannot intervene under s. 230 Act VIII, but must bring a regular suit to establish his right.—2 W. R. 289.

3. Procedure by Magistrate in disputes concerning —.—2 W. R., Cr., 64 (4 R. J. P. J. 564); 14 W.R., Cr., 28.

4. S. 320 Act XXV of 1861 does not require that there should be an apprehended breach of the peace before the authorities can interfere to decide a —.—*Ib.*

5. A — cannot be claimed over land acquired by a Railway Company under Act VI of 1857, unless the Company lays itself under obligation to provide a way.—3 W. R. 27 (4 R. J. P. J. 390).

So as to land acquired by Government.—14 W. R., Cr., 72.

6. A — over land is ordinarily a right of passing, and not a general right to pass from one point to another.—4 W. R. 49.

7. The relinquishment of all right and interest in land exchanged does not necessarily involve loss of — over the land.—4 W. R. 83.

8. A — is not affected by the fact of there being another pathway to the main road.—6 W. R. 222.

Or another pathway by which access may be obtained to the same premises.—22 W. R. 302. *See* 15 W. R. 496.

9. A — in India need not be proved by user for 20 years to give a right by prescription or presumption of a grant. Proof of well-established and fixed user will be sufficient.—7 W. R. 271. *See also* 10 W. R. 452, 14 W. R. 199. *But see* 20 W. R. 283.

10. Suffering a neighbour's cows to pass over a piece of land on their way to pasture, does not give a — so as to make cultivation impossible.—8 W. R. 268.

11. User during previous ownership is no evidence of a — relating to the land of another.—10 W. R. 298.

12. A claim to pull down a house, erected 7 years before, on a path whereby plaintiff and others were accustomed to go across defendant's land, was held unreasonable and such as no Court of equity or good conscience should enforce.—10 W. R. 316.

13. A — may be created by passing over the land of another at particular seasons of the year only.—10 W. R. 363.

14. The party with whose express consent the Magistrate alters an existing path to one more convenient to the public generally, is bound by such act, and has no right of adverse action.—11 W. R. 301.

15. A — over another's land, discontinued for the space of 6 years, cannot be re-established by suit.—14 W. R. 79. *See* 16 W. R. 277.

16. When a claim to a — is supported by evidence of user only, the Court must satisfy itself whether or not the user was founded on actual right; the guiding principle being that open user of another's land for the purpose of a road or pathway, if continued without interruption for a long time and not attributable to permission or sufferance, induces the presumption that the user was of right.—14 W. R. 124. *See also* 17 W. R. 11.

17. A general right of thoroughfare includes a — for marriage or other processions unless expressly prohibited at the time of the inception of the right.—15 W. R. 46, 20 W. R. 293.

18. No length of time can give such a right as destroys all the ordinary uses of the servient property, *e.g.* a straggling right as to the promiscuous use of the whole property for the purpose of driving cattle over it.—15 W. R. 295.

19. A — from one point to another over another's land, does not give the right to pass in a particular tortuous and indirect course between the two points.—15 W. R. 496.

20. The purchaser of a house acquires the — to a road which had been enjoyed with the house by the vendor, if it is not merely a right to a way of necessity, but a particular right over a defined path.—15 W. R. 526.

21. A suit to enforce a right to a pathway through a door leading to a joint *thakoorbaree* is not a claim to a right of user, but a complaint of obstruction.—16 W. R. 277.

22. A — need not have its origin in an express grant,

RIGHT OF WAY (*continued*).

but may be established by continued user for a certain period constituting adverse possession.—16 W. R. 284.

23. Where, upon the construction of a conveyance, the plaintiffs were considered to have acquired, not a right in the soil of a passage, but only a — over it,—*Held* that they were only entitled to complain of any acts of the defendant which obstructed them in the enjoyment of that —, and to an injunction to future obstructions, and that the use of doors, opened out by the defendant from his house into the passage to clean privies, was a serious obstruction to the use of the plaintiffs' —.—(O. J.) 18 W. R. 379.

24. S. 62 Act XXV of 1861 does not apply to a private dispute between two parties relative to a path.—19 W. R., Cr., 6.

25. Where plaintiff asks to have a — declared over a piece of land, he should be required to specify the direction and extent of the way; but where plaintiff seeks to close up a way, defendants proving that there is a — over the place, is a sufficient answer to the claim.—20 W. R. 94.

26. Where a new way is substituted for an old one with the consent of the person entitled, and the non-user of the original way is accompanied by acts which warrant the Court in inferring an intention to release, the right of resumption is lost, and the non-user need not extend over any defined period.—20 W. R. 188.

27. In a suit for a declaration that defendant had no — over certain land belonging to plaintiff, where it appeared that defendant had obtained an order from the Magistrate under s. 320 Act XXV of 1861, the *onus* was held not to lie with defendant to prove an easement, but with plaintiff to prove that he was entitled to exclusive possession.—21 W. R. 140.

28. A right of user over a pathway may be established notwithstanding that the path passes over waste land.—22 W. R. 340.

29. A temporary interruption, such as during the rainy season, cannot effect such right of user.—*Ib.*

30. An order (under s. 320 Act XXV of 1861 or s. 532 Act X of 1872) declaring that, as between the parties to a contention regarding a — over certain land, the land in dispute did not belong to the public, is not one the contravention of which can form the subject of an order under s. 188 Penal Code.—24 W. R., Cr., 20.

31. Where plaintiff had by long user acquired a — to his tank and granary for himself and those who came by that passage to remove the rice which he had to sell, and defendants had obstructed that passage so as to prevent access to his tank,—*Held* that plaintiff had a good cause of action.—25 W. R. 225.

See Easement 4.
Jurisdiction 126, 149, 206, 230, 341, 344.
Jury 38.
Lease 54.
Limitation (Act XIV of 1859) 288.
,, (Act IX of 1871) 16, 17, 37, 38.
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Pre-emption 57.
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Right of Worship.

See Declaratory Decree 38.
Endowment 22, 26, 30, 31, 34, 41, 45.
Hindoo Law (Religious Ceremonies).
Partition 28.
Right of Public 1.

Right to Begin.

In all suits under Act VIII of 1859, the party on whom the burthen of proof rests has the —, whether such suits be of the nature of suits in Equity, or of suits at Common Law.—2 Hyde 182.

See Attached Property 26.
Jury 30.

Right to Examine.

See Witness 2, 19, 86.

Right to Light and Air.

1. Ancient lights cannot be obstructed by the owner of the adjacent land building on it, so as to obscure the light and air always enjoyed. Whether the party has or has not other windows on another side of his premises is immaterial.—3 W. R. 29.

2. Money damages will be no compensation for the injury, but the obstructions must be removed.—4. W. R. 23.

3. The owner of a house cannot by prescription claim to be entitled to the free and uninterrupted passage of a current of wind. He can claim no more air than is sufficient for sanitary purposes, and only so much light as is necessary to make the premises fit for occupation or business.—2 Hyde 125.

4. A person cannot be allowed to maintain a wall to the injury of his neighbour. But where A built an upper story to his house overlooking the inner apartments of B, who thereupon built a wall which A complained deprived him of light and air, it was held that, as A was the first and greater wrong-doer, he was entitled to no relief even if it were shown that B's wall had deprived him of light and air after long enjoyment thereof.—5 W. R. 208.

5. Defendant having built on his own ground a wall which blocked up plaintiff's apertures in his house for the egress of smoke and ingress of air, was required to make corresponding apertures in his wall, so as to render unnecessary the pulling down of the wall.—6 W. R. 86.

6. Under the English law which prevailed before the 2 & 3 Wm. IV c. 71, in order to establish a right to light, an uninterrupted user of at least 20 years with the acquiescence of the owner of the servient tenement, must be proved. Where a building was commenced, with the manifest intention of being erected as an obstruction, before the expiration of the 20 years, although it was not raised to such a height as to actually amount to an obstruction until some days after the 20 years had elapsed, the plaintiffs had not established their case.—(P. C.) 194.

7. Any prescriptive — which an old house may have conferred, disappears with the construction of a new one.—20 W. R. 185.

See Easement 8.

Right to Sue.

1. An unborn son's — does not give a perpetual right of action.—1 W. R. 283.

2. Under the Law of Procedure of India, it is necessary that the party who holds the real beneficiary interest in the property sued for, should come forward as plaintiff. A trustee may sue, but then he represents the beneficiary interest of the *cestui-que-trust*, and would not put himself forward to the Court as himself the principal or *cestui-que-trust*, and not the trustee. A *benamee* holder may sue as trustee in behalf of a beneficial owner, without disclosing the name of the real owner; and if the defendant does not object to the suit proceeding in that form and raises no issue upon the real title of the plaintiff, the suit may proceed and be decided, the benameedar suing in the place of the real owner. But if the defendant objects to the suit being instituted by the nominal and fictitious owner, and denies plaintiff's —, the suit cannot proceed or must be dismissed.—3 W. R. 159, 20 W. R. 72.

But plaintiff's *primâ facie* title under a lease and bill of sale is sufficient to give him a — for possession, and defendant cannot raise a question as to plaintiff's nominal ownership.—18 W. R. 454, 24 W. R. 99.

RIGHT TO SUE (*continued*).

3. *Quære.* Whether a new suit will lie upon a decree pending an appeal.—5 W. R. 276.

4. An unsuccessful application by the grandmother of a minor for a certificate under Act XL of 1858 is no bar to her — under a *necumputro* authorizing her to represent the minor.—5 W. R., Mis., 36.

5. The widow of one of three judgment-creditors, having failed to be made a party to the original suit under s. 73 Act VIII, has a — for her share of the money received under the decree.—10 W. R. 397.

6. The purchaser of a putneedar's rights and interests sold in execution of a decree during the pendency of a suit brought by the latter against his tenants, acquires the putneedar's right to carry on the suit.—12 W. R. 122.

7. A — cannot be seized and sold under Act VIII.—12 W. R. 378. *See also* 3 W. R., Mis., 16. 18; 7 W. R. 278; 10 W. R. 225; 11 W. R. 152.

8. Under the Mitacshara law, a member of a joint Hindoo family cannot sue separately for his share of the joint family property.—12 W. R. 178, 14 W. R. 339, 15 W. R. 436, 18 W. R. 48. *See also* (P. C.) 25 W. R. 285.

9. Where, subsequent to the execution of a bond, plaintiff took from the obligor an *ijara* and a *dur-ijara* and executed *ijara* kubooleuts agreeing to accept payment of the bond by setting off the rents due on the kubooleuts, and arranging that, at the end of the term of the *ijara*, accounts should be settled, neither party being free to put an end to the case,—*Held* that plaintiff could not sue on the bond till the termination of the case.—13 W. R. 24.

10. Where plaintiff alleged that defendant took away from him for a certain purpose a document which he now falsely says is lost, plaintiff was held to have a — either to recover that document, or, if lost, to require defendant to execute a similar document.—15 W. R. 189.

11. Lakherajdars whose lands have been resumed have the right, under s. 15 Reg. VII of 1822 (if not barred by limitation), to bring a civil suit to revise, annul, or alter a settlement made by the Collector, not only as against those who claimed the settlement before the Revenue authorities, but against all who have claims.—15 W. R. 537.

12. The — under s. 107 Act X is confined to one of the two parties concerned, namely decree-holder and claimant; and does not refer to the judgment-debtor who has nothing to do with the claim.—19 W. R. 106.

13. There exists no — to set aside an order of the Court which has jurisdiction, deciding that a will is not sufficiently proved and vesting the management of a minor Hindoo widow's property in her guardian.—19 W. R. 127.

14. A member of a joint family has no — alone for the recovery of property belonging to other members as well as himself. If he cannot induce them to join him in a suit, he must make them defendants.—20 W. R. 138.

15. Ryots interfered with in the occupation of their land have a — for an injunction restraining the trespasser; but when they are ousted, the zemindar has a — the trespasser to recover possession.—22 W. R. 74.

16. One of the members of a committee of guardianship and management has no — without the authority of the other members.—23 W. R. 242.

17. A purchaser from a party not in possession has a — to recover the land. —(*Citing decisions on the point*) 25 W. R. 223.

18. Where defendants had given plaintiff certain hoondees, on the dishonoring of which by defendants' agent defendants executed a fresh bond for the amount of the hoondees but failed to deliver it to plaintiff who therefore did not return the hoondees to defendants.—*Held* that the delivery of the bond was a condition precedent to the cancellation of the hoondees, and that plaintiff had a — upon the hoondees.—25 W. R. 527.

See Ancestral Property 5.
Assignment 2.
Auction-Purchaser (Execution Sale) 16.
Bond 16*a*.
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Breach of Contract 3, 11.
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See Certificate 109, 110, 120.
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Enhancement 278.
Ex-parte Judgment or Decree 37.
Forfeiture 22.
Fraud 15.
Fresh Suit.
Ghatwals 31.
Gift 9.
Guardian 2, 9.
Hindoo Law (Adoption) 68.
,, ,, (Alienation) 9.
,, ,, (Coparcenary) 55, 58.
,, ,, (Religious Ceremonies) 1, 2, 4, 5, 6, 7, 10, 12.
,, Widow 2, 9, 39, 46, 114, 115, 116, 121.
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,, (Act XIV of 1859) 68, 314.
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Partnership 18.
Practice (Attachment) 8*b*.
,, (Execution of Decree) 37, 111, 184, 186, 277.
,, (Possession) 62, 76, 79, 94.
,, (Suit) 35.
Principal and Agent 6, 36.
,, ,, Surety 32.
Privy Council 23, 55.
Public Policy 1, 2, 3.
Putnee Talook 48, 88, 101.
Receiver 1, 2.

RIGHT TO SUE (*continued*).

See Recorders 3.
Refund 5.
Registration 120.
Reversioner 3, 4, 7, 9, 12, 14, 15, 20, 22, 25.
Road 2.
Sale 116, 126, 133, 144, 162, 205.
" Law 17.
Service Tenure 7.
Settlement 12, 20.
Special Appeal 108.
Summary Award for Rent 7.
Voluntary Payment 2, 4.
Vendor and Purchaser 74.
Waste 1, 3, 4.
Witness 24.
Wrongs and Remedies 8.
Zur-i-peshgee Lease 36, 37.

Rioting.

1. The offence of being a member of an unlawful assembly is included in that of —.—1 W. R., Cr., 7. *See* 16 W. R., Cr., 45.

2. A zemindar is not liable, under s. 155 Penal Code, for a sudden and unpremeditated riot which there is no reason to suppose he could have anticipated or thought likely to happen.—3 W. R., Cr., 54.

Nor under s. 154.—12 W. R., Cr., 75.

3. An attack made in the morning by an unlawful armed assembly, with the object of rescuing two thieves captured during the night, and in which murder was committed, was held to be a *premeditated* attack for which all were liable to conviction for riot attended with murder.—4 W. R., Cr., 8.

4. Persons convicted of — may also be found guilty of hurt and grievous hurt.—5 W. R., Cr., 19. *See also* 7 W. R., Cr., 60; 9 W. R., Cr., 33. *But see* 17 W. R. 59.

5. A dismissal by one Court of a charge of — against A may be a bar to A's trial by another Court on the same charge, but it does not extend to other persons not then before the Court which ordered the dismissal.—6 W. R., Cr., 51.

6. The dismissal by one Court of the charge of — instituted by the Police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrences.—*Ib.*

7. In a case of — with deadly weapons, the side found guilty of using them are more punishable than the other.—8 W. R., Cr., 3.

8. Persons taking part in a riot in opposite sides should not be committed for trial on joint charges as if the two parties had a common object.—(F. B.) 8 W. R., Cr., 47. *See also* 9 W. R., Cr., 33; 12 W. R., Cr., 75.

9. Where the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from — and being members of an unlawful assembly, to one for affray, although grievous hurt resulting in death was caused to one of the persons.—12 W. R., Cr., 72.

10. Persons charged with — ought not to be convicted on the evidence of the opposite party also charged with —.—21 W. R., Cr., 48.

The statements made by the one set of prisoners cannot be taken into consideration, under s. 30 Act I of 1872, against the other set.—21 W. R., Cr., 53.

11. In order to convict of — there must be evidence of a common object which was unlawful or was intended to be accomplished by unlawful means.—22 W. R., Cr., 17. *See also* 24 W. R., Cr., 26.

See Culpable Homicide (not amounting to Murder) 7.
High Court 13.
House Trespass 2.
Information 6.
Land Dispute 26.
Obstruction 7.
Right of Private Defence 5.
Unlawful Assembly 7.

Riparian Owner.

See Churs 35, 39, 41, 75, 76.
Embankment 5.
Ferry 1.
Water 1, 15, 21, 27, 29.
Watercourse 4, 7.

River.

See Churs.
Ferry.
Julkur 2, 8, 12, 14, 19, 20, 22.
Jurisdiction 127, 440.
Practice (Execution of Decree) 208.
Settlement 9.
Theft 15.
Water 29.

Road.

1. Land granted for a — used annually for the Ruth Juttra is not assessable with rent.—1 W. R. 6.

2. A person who did not oppose the making of a — until its completion, cannot sue to have it closed.—1 W. R. 288. *See* 7 W. R. 276.

3. Chapter XX Act XXV of 1861 refers to public thoroughfares and not to private roads on which right of way has been established.—8 W. R. 268.

4. Although a — may be a private one, a Magistrate may make an order under s. 308 Act XXV of 1861 if it appears that the case is one to which s. 320 applies.—19 W. R., Cr., 33.

5. Where there is a —, the privilege to use which is enjoyed only by one particular section of a community, it is absurd to say that that — is a public one, although the number of people who have the privilege of using it may be great.—25 W. R. 233.

See Abatement 21.
Cattle Trespass 3.
Jurisdiction 126, 147, 246, 247, 331, 344, 404.
Municipal 5.
Obstruction 1, 6.
Res Judicata 89.
Right of Way 25.
Road Cess.
Toll 1.

Road Cess.

A — return made by a shareholder under the Schedule of Act X of 1871 (B. C.) is not admissible as evidence against another shareholder.—22 W. R. 192.

Robbery.

1. Discussion as to what constitutes —.—3 W. R., Cr., 14 (4 B. J. P. J. 573).

2. Non-resistance through fear to the carrying off of property, without delivery, constitutes — and not extortion.—5 W. R., Cr., 19.

3. Where persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each charge.—6 W. R., Cr., 83.

See Amends 8.
Grievous Hurt 7.

ROBBERY (*continued*).

See **Hurt 1, 3.**
Jurisdiction 243.
Jury 7.
Stolen Property 1.

Roman Catholic.

Quære. Whether a — of Portuguese extraction can, under the law current amongst members of that Church in Chittagong, take under a nuncupative will; and, if not, to what is a wife entitled under the law regarding succession of intestates among members of that Church.—3 W. R. 63.

See **Legacy 1.**

Roznama.

See **Limitation 40.**

Rule Nisi.

See **High Court 88, 106.**
Jury 38.
Limitation 219.
Nuisance 5, 12.
Security 17, 20.
Small Cause Court 34.

Rules of Practice.

1. Rules of 28th October 1859, passed in pursuance of Act VIII of 1859.—5 W. R., Rules of Practice, 1.
2. Rules of 1st January 1861 cl. 8.—*See* High Court 7.
3. Rules of 1st May 1863.—5 W. R., Rules of Practice, 5.
4. Rules of same date, in lieu of Rules 27 to 36 of 28th October 1859 (Review of Judgment).—*Ib.* 7.
5. Rules of 21st June 1865 (Motions).—*Ib.* 8.
6. Rules of 4th April 1866.—5 W. R., Letters Patent, 11. *See* Mandamus 3.
7. Rules of 2nd May 1866 (Admission, etc., of Pleaders and Mookhtars in Mofussil Courts).—5 W. R., Rules of Practice, 9.
 Cl. 39.—*See* Mookhtar 7, 8, 9.
8. Rules of 10th May 1866.—*See* Special Appeal 54; Value of Suit or Appeal 5.
9. Rules of 16th May 1866 (Special Appeals).—5 W. R., Rules of Practice, 15.
10. Rules (Pleaders' Fees).—*Ib.* 15. *See* Costs 73.
 Cl. 7.—*See* Costs 57.
11. Rules of 16th May 1867 (English Committee).—7 W. R., Rules of Practice, 1.
12. Rules of 1st June 1867 (Review of Judgment).—8 W. R., Rules of Practice, 1.
13. Rules of July 1867.—*See* Full Bench 9.
14. Rules of 5th August 1867 (Appeals under s. 15 of the Letters Patent).—8 W. R., Rules of Practice, 2.
 Cl. 1.—*See* High Court 89.
15. Rules of 9th November 1869 (Admission, etc., of Pleaders and Mookhtars in Mofussil Courts).—12 W. R., Rules of Practice, 1.
16. Rules to take effect from 1st December 1869 (Jury Rules).—*Ib.*, Jury Rules, 1.
17. Rules of 16th July 1870 (Amendment of Jury Rules).—14 W. R., Rules, 1.
18. Rules of 30th July 1870 (Appeals to Privy Council).—*Ib.*
19. Rules of 3rd September 1870 (Regular Appeals).—*Ib.* 5.
20. Rule of 14th November 1870 (Scale of Fees for Search, etc.).—*Ib.* 7.
21. Rules of 25th November 1870 (Costs in Pauper Suits, Original side).—*Ib.*
22. Rules of 1st December 1870 (Examination and Admission of Attorneys).—*Ib.*
23. Rule of 19th December 1870 (Special Appeals).—*Ib.* 11.
24. Rule of 19th December 1870 (Review of Judgment).—*Ib.*
25. Rule of 17th January 1871 (Examination of Pleaders in Assam).—15 W. R., Rules, 1.
26. Rules of 19th January 1871 (Admission, etc., of Mookhtars, Appellate side).—*Ib.*
27. Rules of 19th January 1871 (Attendance, etc., of Vakeels.—*Ib.* 2.
28. Rules of 4th February 1871 (Disposal of Rent-suits).—*Ib.* 4.
29. Rules of 7th September 1871 (Admission, etc., of Pleaders and Mookhtars in Mofussil Courts).—16 W. R., Rules, 1.
30. Rules of 27th January 1872 (Special Appeals).—17 W. R., Rules, 3.
31. Rules of 23rd March 1872 (Criminal Appeals, References, etc.).—*Ib.* 4.
32. Rules of 8th December (Receipt and Payment of Money Deposits).—*Ib.* 5.
33. Rules to take effect from 12th April 1872 (References from Calcutta Small Cause Court).—*Ib.* 9.
34. Rules of 9th January 1873 (Payment of High Court Stamps, etc., on Original side).—19 W. R., Rules, 2.
35. Rule of 19th February 1873 (Particulars to be given in Petitions for Probate, etc.).—*Ib.* 5.
36. Rule of 27th February 1873 (Rescinding Rule of 19th December 1870 regarding Special Appeals).—*Ib.*
37. Rules of 11th September 1873 (Admission of Vakeels in the High Court.—20 W. R., Rules, 11.
37*a*. Rules of 11th September 1873 (Admission, etc., of Pleaders and Mookhtars in Mofussil Courts).—*Ib.* 13.
38. Rules of 23rd February 1874 (Court Fees).—21 W. R., Rules, 9, 12, 13, 14, 25.
39. Rules of 9th March 1874 (Admission, etc., of Pleaders and Mookhtars in Mofussil Courts).—*Ib.* 19.
40. Rules of 12th March 1874 (Special Appeals).—*Ib.*
41. Rules of 5th March 1874 (Fees and Charges of High Court, Original side).—*Ib.* 21.
42. Rules of 12th September 1874 (Admission, etc., of Pleaders and Mookhtars in Mofussil Courts).—22 W. R., Rules, 11.
43. Rules of 22nd May 1875 (Scale of Costs in High Court, Appellate side).—23 W. R., Rules, 11.
44. Rules of 15th September 1875 (Regular Appeals, Paper Books).—24 W. R., Rules, 6.
45. Rules to be observed by Proctors, Solicitors, Agents, and other persons admitted to practise before the Privy Council.—(P. C.) 13 W. R., P. C., 45. *See* Evidence (Documentary) 102.

Ruth Jattra.

See **Road 1.**

Ryots.

1. Definition of the word —.—W. R. Sp. (Act X) 61 (2 R. J. P. J. 267).
2. What is meant by "the same class of ryots" with regard to occupancy.—6 W. R. (Act X) 33, 12 W. R. 102.
3. — holding under terminable leases.—*See* Ejectment 39; Occupancy 31, 44, 51, 55.
4. Ss. 3 to 6 Act X of 1859 do not provide for — holding since the Permanent Settlement at varying rates.—9 W. R. 522. *See* 10 W. R. 123.
5. The mere fact of a ryot residing in a mouzah other than that in which his land is situated does not preclude him from being treated as a resident ryot within the meaning of s. 16 Act VIII of 1865 (B. C.).—20 W. R. 426.
6. Projah.—*See* Landlord and Tenant 54.

See **Abatement 25.**
Churs 36.
Ejectment 33.
Enhancement 15, 120, 197, 224.
Jurisdiction 169, 170, 202.
Khas Mehals.
Landlord and Tenant.
Lease 87.

Ryots (*continued*).

See Limitation 90.
Occupancy 40, 89.
Partition (Butwarra) 20.
Pottah 28.
Practice (Execution of Decree) 88.
Under-Tenures 15.

Sagyi.

See Hindoo Law (Inheritance and Succession) 9.
Marriage 8.

Salary (or Wages).

See Partnership 30.
Practice (Attachment) 19, 22, 44, 52.

Sale.

1. When a granddaughter purchases from a grandmother and attempts to oust a stranger who purchased *bonâ fide* and without notice, full and satisfactory proof of the *bona fides* of the transaction is necessary, though no motive for fraud is proved.—W. R. F. B. 77 (2 Hay 167).

2. Effect of — in execution of decree against the representatives of a deceased person.—W. R. F. B. 119.

3. S. 151 Act X of 1859 bars a regular suit or appeal (whether under s. 105 or 110) by a judgment-debtor to set aside a — in execution of a decree for arrears of rent.—W. R. F. B. 147 (2 R. J. P. J. 150); W. R. Sp. (Act X) 122 (3 R. J. P. J. 113); 1 W. R. 141, 159; 4 W. R. (Act X) 5, 28, 38, 48; 6 W. R. (Act X) 55; 9 W. R. 80, 145, 363; 15 W. R. 119. *But see* 15 W. R. 58.

4. A — by a father, as guardian, of property devolving on his sons from their maternal grandfather, can only be justified by proof of necessity for the son's benefit.—1 Hay 26. *See also* 6 W. R. 30.

So also a — by a mother as guardian of property belonging to her minor sons.—23 W. R. 424.

5. A — of property in execution of a decree cannot defeat a title arising from a *bonâ fide* purchase made prior to that decree.—1 Hay 34.

6. A property purchased in execution of a decree with an incumbrance of mortgage, is liable to be sold, at the instance of the mortgagee, for the satisfaction of the mortgage-debt.—1 Hay 106.

7. S. 260 Act VIII of 1859 is not retrospective in its operation.—2 Hay 83.

8. A decree-holder alone is entitled to plead an attachment as a bar to the validity of a —, which it is made in fraud of his rights to recover the demand, for the realization of which the attachment was made.—2 Hay 199.

9. A defendant who does not come under the category of creditors, is not entitled to question the *bona fides* of a sale admitted by the vendor, on the ground that it is in fraud of the creditors.—*Ib.*

10. Under s. 245 Act VIII of 1859, a mere tender of money before the Judge is not sufficient to entitle the judgment-debtor to a stay of the —.—2 Hay 302.

11. A — of an under-tenure under Act VIII of 1835, passes only the right, title, and interest of the judgment-debtor, and does not necessarily avoid the incumbrances created by the old tenant.—2 Hay 502, 9 W. R. 200, 15 W. R. 11. *See* Sale Law 9.

12. When a property is sold in execution of a decree which was in force at the time of —, but was eventually set aside on appeal, the remedy of the party aggrieved is by a suit for the reversal of the —, and not by a suit for damages.—2 Hay 624.

13. Under a — in execution of decree, no property can be sold except that which belongs to the defendants in the suit. Accordingly, if under a decree in a suit against A alone, for a debt for which B is jointly liable, an estate be sold in which B is entitled to an equal share with A, the interest of A alone is acquired by the purchaser.—Marshall 647.

So also in a sale of the rights and interests of one member in a joint family.—9 W. R. 452.

14. A — in execution of decree cannot be reversed under s. 256 Act VIII on the ground of irregularity where no substantial injury is proved or alleged.—Sev. 568; 2 W. R., Mis., 1; 6 W. R., Mis., 82; 11 W. R. 114, 226; 12 W. R. 488; 19 W. R. 78; 22 W. R. 550; 24 W. R. 227, 240.

15. A member of a joint Hindoo family can sue a judgment-creditor for damages in bringing his estate unjustly to — during his minority and while he was unrepresented, in execution of an *ex-parte* decree upon a bond given to the judgment-creditor by the minor's uncles, and may claim compensation from the creditor in the shape of a restoration of the estate if the creditor be the auction-purchaser.—Sev. 845.

16. In the absence of a regularly appointed guardian, the party dealing with the managing members of a joint Hindoo family for the share of minors or absent persons, is bound to see not only to the necessity but also to the application of the purchase-money.—*Ib.*

17. A — conducted by a Peshkar, by direction of his Moonsiff who was indisposed, was upheld, no substantial injury being shown to have resulted.—W. R. Sp. 44.

18. The notice of the interests to be put up for — is alone what must be looked at as affording an estimate of the value and extent of the purchase.—W. R. Sp. 55.

19. Where the rights of a Mahomedan widow, who has been declared under Act XIX of 1841 entitled to a fourth share of her husband's estate, but who has never had possession, are sold, and a suit is pending by deceased husband's nephew to recover that share on the ground that the vendor had been divorced, all that the vendors are entitled to is to represent the vendor in the suit.—W. R. Sp. 93.

20. A — in execution of a decree pending appeal and subsequently reversed cannot stand, and the party dispossessed is entitled to recover with mesne profits.—W. R. Sp. 129.

21. Where land is attached in execution, its liability to — under s. 216 Act VIII of 1859 depends on the fact of possession; but to set aside a — under that section, the right and title must be ascertained.—W. R. Sp. 163.

22. Where a — by a guardian is reversed and the *bonâ fide* purchaser ordered to be re-imbursed, the minor is liable for the purchase-money.—W. R. Sp. 208.

23. Where a decree is sold and the — is admitted by the decree-holder in Court, the judgment-debtor cannot contest the purchaser's right to execute it, except on the plea of payment.—W. R. Sp. 313 (L. R. 91).

24. Where a jote is attached and sold for two out of three decrees for rent against it, it is liable for all three decrees.—W. R. Sp. 387 (3 R. J. P. J.) 122).

25. An under-tenure is liable under s. 105 Act X of 1859 to — in execution of a decree for arrears of rent for even 11 years. The proprietor wishing to stay a — must proceed under s. 106.—W. R. Sp. (Act X) 48 (2 R. J. P. J. 212). *See* 13 W. R. 419, (F. B.) 21 W. R. 94.

26. Under s. 105 a transferable under-tenure may be sold in execution of decree, provided there be an arrear of rent adjudged.—W. R. Sp. (Act X) 91 (3 R. J. P. J. 19). *See* 13 W. R. 449.

27. A — of Mogulan dues by a Mahomedan widow was annulled as made without proof of power to sell.—(P. C.) 5 W. R., P. C., 61 (P. C. R. 77).

28. Impeachment of — of an estate in execution of a decree under Reg. XX of 1793.—(P. C.) 5 W. R., P. C., 7 (P. C. R. 488).

29. The words "attachment and —" in s. 203 Act VIII are to be taken together and not distributively. Taken in that sense, a — of mortgaged premises is to follow an attachment, and is not to be an independent proceeding unconnected with a previous attachment.—1 Hyde 158.

So the same words in ss. 201 and 250 Act VIII, a — without previous attachment being illegal.—8 W. R. 415. *But see* 113 *post* and 11 W. R. 226.

30. Although purchasers are not bound to look to the application of the purchase-money, or to enquire whether there were goods sufficient to redeem a mortgage and so to obviate the necessity of a — of a minor's property, yet the purchaser's not proving necessity or not satisfying himself of the existence of necessity, and the unwillingness of the minor's mother to dispose of the property in his minority,

SALE (*continued*).

were held to be sufficient legal grounds for the reversal of the —.—1 W. R. 14.

31. Under s. 258 Act VIII, where a — of immoveable property is set aside, the purchaser is entitled to recover back his purchase-money. If the Court reversing the — omit to make such order, the purchaser can sue to recover the money from the person who has received it.—1 W. R. 55, 6 W. R. 147, (O. J.) 19 W. R. 16. *But see* 10 W. R. 365, *and* (*reversed by F. B.*) 132 *post*.

32. Merely having caused the — of a house wrongly attached, does not involve liability for subsequent destruction of the house.—1 W. R. 95.

33. S. 257 Act VIII applies only to a — in execution held after that Act came into operation.—1 W. R. 204.

34. A — of land paying revenue to Government need not be held by the Collector under s. 248 Act VIII unless the Government shall so direct.—1 W. R., Mis., 3.

35. A proclamation of 30 days is necessary when the property is first advertized for —, and not when the — is postponed for the convenience of the debtor.—*Ib.*

36. S. 255 Act VIII relates to a re-sale and not to a postponed —.—*Ib.*

37. A — by second attaching creditor cannot be set aside at suit of first, who delayed to proceed to —.—2 W. R. 62.

38. A — for arrears of rent is not affected by prior — of ryot's interests.—2 W. R. 131. *See* 13 W. R. 449, (F. B.) 21 W. R. 94.

39. Where a tenure has been sold under s. 105 Act X in execution of a decree for the rent of land held under a mourosee pottah, a tenant in possession is at liberty to show that the decree had been obtained by fraud and collusion against a person who then had no interest in the premises.—2 W. R. (Act X) 63.

40. Receipt of rent from a transferee debars the zemindar from selling the tenure for prior arrears.—2 W. R. (Act X) 86 (4 R. J. P. J. 198).

And amounts to his assenting to the transfer of the tenure whether the whole is sold or a part.—14 W. R. 211.

41. A, being mortgagee of two properties, M and P, obtained a decree under which both were attached and lotted for sale, P to be sold first, and M afterwards. On the application of the judgment-debtor, the Principal Sudder Ameen sold M first and P next. After the —, J, claiming as purchaser of M under a conveyance dated subsequently to the mortgage, applied to the Court to set aside the — as irregular. *Held* that he could not come in under s. 256 Act VIII, ss. 256 and 257 not applying to a third party, but to the judgment-debtor alone.—2 W. R., Mis., 13; 24 W. R. 452.

42. Under s. 257 Act VIII, the order of a Judge on appeal, setting aside a — of immoveable property on the ground of irregularity, is final, unless, under s. 35 Act XXIII of 1861, the Judge is shown to have acted without jurisdiction.—2 W. R., Mis., 19. *See* 4 W. R., Mis., 22.

43. The — of property mortgaged to A, in execution of a decree against B, will not extinguish B's lien, whether notification of the mortgage were given or not at the time of —.—2 W. R., Mis., 21.

44. A — in execution of a decree is simply what the — notification expresses it to be, viz. a — of the rights and interests of the judgment-debtor.—3 W. R. 65, 6 W. R. 223. *See* 77 *post*.

45. Neither s. 257 nor s. 387 Act VIII applies to a suit to set aside a — made under Reg. VII of 1825.—3 W. R. 70.

46. Irregularities occurring in a — under that Regulation are not sufficient to vitiate the —, unless they cause injury to the party suing.—*Ib.*

47. A lender is not bound to enquire into the exact amount necessary to be borrowed to save an estate from — for arrears of revenue. It is sufficient if he satisfy himself of the existence of a necessity to justify him in looking to the estate for repayment.—3 W. R. 122.

48. Subordinate under-tenures, not created in good faith, are not protected where the tenure itself (a *howlla* as in this case) is sold for arrears of rent.—3 W. R. 127. *See also* 6 W. R. (Act X) 86, 7 W. R. 318.

49. Where the legal necessity for a — by a mother during her son's minority is not recited in the deed of —, it may be proved by other evidence.—3 W. R. 154.

50. A mortgage created by a defaulting under-tenant cannot prejudice an auction-purchaser of the tenure sold for arrears of rent under s. 105 Act X.—3 W. R. 217.

51. A — in execution, once completed, cannot be set aside except on default of auction-purchaser.—3 W. R. (Act X) 145.

52. A fresh proclamation under s. 249 Act VIII is necessary in case of an indefinite postponement of — in execution.—3 W. R., Mis., 11. *See also* 6 W. R., Mis., 84; 17 W. R. 339, 22 W. R. 481; 25 W. R. 328.

But not in case of short postponements at the instance of the judgment-debtor.—19 W. R. 227, 23 W. R. 256, 25 W. R. 34.

53. The non-issue of such a proclamation is an objection to the regularity in publishing the —, which ought, by s. 256 Act VIII, to be investigated.—*Ib. See also* 25 W. R. 183.

54. Chowkeedar's receipts and Nazir's returns are not evidence *per se* of the proclamation of a —.—*Ib.*

55. A — in execution of a decree is illegal if made on a day which, though not a fixed holiday, yet was a day on which the Courts were closed by order of the High Court, and therefore as much a holiday as any other fixed holiday.—3 W. R., Mis., 21.

56. A purchaser is not bound to prove the necessity of a —.—4 W. R. 64.

57. Under s. 105 Act X read together with ss. 86 and 87, a Collector acts without jurisdiction in ordering the — of an estate in execution of a decree for rent against other landed property before proceeding against the person or moveable property of the debtor or against the tenure upon which the arrear accrued; and a suit lies in the Civil Court to set aside the Collector's order as illegal.—4 W. R. (Act X) 5; 8 W. R. 511; 9 W. R. 80, 600; 10 W. R. 224; 11 W. R. 326.

58. In a — under s. 105 Act X, the tenure itself is held free of all incumbrances; whereas in a — under s. 110 only the rights and interests of the defaulter are sold.—4 W. R. (Act X) 30. *See also* 6 W. R. (Act X) 15, 9 W. R. 538. *But see* 97 *post*.

59. Before a — is confirmed, a party objecting to the regularity of the — proceedings on the ground that the notifications of — and attachment had not been properly issued, should be allowed to adduce proof of non-service or insufficient service.—4 W. R., Mis., 9.

60. The misconduct of a decree-holder may be a good cause of action, but cannot be a ground for setting aside a —, which can only be done summarily on proof of irregularity in the — proceedings resulting in material injury to the debtor.—*Ib.*

61. A guardian does not act *bonâ fide* if he makes no real attempt to satisfy himself as to the necessity for a —.—5 W. R. 103.

62. A Court is not bound to consider a deed of — to be a deed of absolute — when the parties treat it as a deed of conditional —.—5 W. R. 104.

63. By a — in execution of the rights and interests of a judgment-debtor as recorded proprietor of a Government resumed revenue-paying estate, released rent-free lands lying in the estate do not pass to the purchaser.—5 W. R. 170.

64. A purchaser at a — for arrears of rent has a preferential title over a purchaser at a prior — in execution of a civil decree, though damages may be recovered by the latter on proof of collusion and fraud.—5 W. R. 205. *See* 13 W. R. 449. *But see* 160 *post*.

65. A suit lies in a Civil Court to set aside a — in execution of a decree of a Revenue Court under Act X of 1859, on the ground of fraud.—(F. B.) 5 W. R. (Act X) 20. *See also* 6 W. R. (Act X) 11, 60; 9 W. R. 326, 363; 10 W. R. 224; 13 W. R. 32, 185; 15 W. R. 58.

Even if the — had been held directly under Act XI of 1859.—9 W. R. 538.

66. So also as to a — under s. 105 Act X.—(F. B.) 5 W. R. (Act X) 22. *See* 9 W. R. 80, 16 W. R. 93.

67. Where a decree-holder is only a sharer in a joint undivided estate, and the property sold is a share in a *gantee* tenure, the — did not take place under s. 105 Act X, but under s. 108 under which latter section only the rights and interests of a defaulter can pass.—5 W. R. (Act X) 71. *See* 15 W. R. 524, 22 W. R. 421.

68. The omission to obtain an injunction to stop a — in execution cannot operate as a waiver of right to object to the — sought to be set aside on the ground of irregularity.—5 W. R., Mis., 46.

Nor the silence of the decree-holder on a previous occasion.—15 W. R. 95.

SALE (*continued*).

69. In a suit for moneys secured by a mortgage of landed property, the decree having ordered the — of that property in satisfaction, the decree-holder was held bound to bring that property to — before he could sell any other property belonging to the judgment-debtor.—5 W. R., Mis., 42.

70. Inadequacy of consideration is not conclusive proof of *mala fides* in a sale by the guardian of a minor.—6 W. R. 30.

71. Payment of debts incurred in performing a father's *sradh*, and maintenance of the minor, are sufficient legal necessity for a — by the guardian.—6 W. R. 34.

72. If, under an execution against A, B's property is sold, B is not bound to reverse the — before he can recover possession; nor will his asking to reverse the — preclude him from recovering possession.—6 W. R. 47.

73. A deed of — executed by a mortgagor in fraud of creditors is void against any of them who may obtain a decree against him, although the deed may have been executed before the decree.—6 W. R. 90.

74. A tenure purchased in execution of a decree for current rent, cannot be resold for the arrears of former years, which must be recovered from the former proprietor. —6 W. R. 112.

75. A — under a mookhtarnamah authorizing B to sign A's name, is valid as regards the right of the purchaser to recover the purchase-money although the mookhtarnamah was not verified until after A's death.—6 W. R. 173.

76. Although in the case of joint family property it is not necessary for the purchaser of an estate actually sold to see to the application of the purchase-money, yet it is necessary for him to make due enquiry as to the necessity to sell.—6 W. R. 193.

It is sufficient for him to be satisfied of the fact of necessity; he need not enquire into its causes.—16 W. R. 221.

He is not bound to prove the fact that family necessity actually existed, but only to establish that he made *bona fide* enquiry which reasonably led him to suppose that necessity existed.—21 W. R. 196.

77. Property not attached and not advertised for — cannot be sold in execution of a decree.—6 W. R. 223. *See* 44 *ante and* 104 *post*.

78. Where a — is fraudulently converted into a mortgage, but subsequently as between the parties to the fraud, restored to its original state, the transaction stands good as —.—6 W. R. 293.

79. Sales between near relatives.—*See* Benamee 3; Hindoo Law (Sale) 6; Onus Probandi 139, 153, 279; Vendor and Purchaser 47; *ante* 1.

80. A suit by an unregistered holder will lie in a Civil Court to set aside the — of a tenure sold in execution of a decree for rent after the money due upon the decree was deposited, s. 151 Act X of 1859 notwithstanding.—(F. B.) 6 W. R. (Act X) 59.

81. Under s. 151 Act X, a suit will not lie in the Civil Court against an order of a Collector refusing to hold a — of a tenure for arrears of rent.—6 W. R. (Act X) 63.

82. Under s. 271 Act VIII, a mortgagee of property which is sold in execution subject to his mortgage, is not entitled to have the surplus proceeds paid out to him in satisfaction of a decree which he has obtained upon his mortgage and upon which he has issued execution.—6 W. R., Mis., 13.

The proviso in s. 271 applies to a case where the property is actually sold subject to a mortgage and where the purchaser is in fact only buying the equity of redemption which remains in the judgment-debtor, but does not apply where there is merely the right by law in the mortgagee to enforce his mortgage against the purchaser.—14 W. R. 209.

The words "subject to a mortgage" must be taken to mean "sold with notice of the mortgage."—21 W. R. 43.

Having elected to satisfy his mortgage lien and procured the — of the landed property subject to that lien, he must recoup himself from the mortgaged property.—16 W. R. 306.

83. Where a decree directs the — of A's property first and then of B's, if the decree-holder is unable from opposition to sell A's property and proceed against B's and cannot realize his decree therefrom, he has not lost his right to attach and sell A's property.—6 W. R., Mis., 18.

84. A judgment-debtor whose right in the property in dispute was put up for — under a previous execution and purchased by the decree-holder himself, can contest the legality of the —.—6 W. R., Mis., 31. *See* 159 *post*.

85. Inadequacy of price is not a sufficient ground for setting aside a — in execution unless it be the effect of an irregularity in the — proceedings.—*Ib. See also* 14 W. R. 44, 17 W. R. 210, 19 W. R. 227, 24 W. R. 227, 25 W. R. 326, (P. C.) 26 W. R. 44.

Held otherwise where the inadequate price was produced by a misstatement in the — notification.—14 W. R. 321.

Mere irregularity in the issue of processes will not of itself prove fraud even where the auction bids were suspiciously small.—24 W. R. 288.

Inadequacy of price was held to be no ground for setting aside a *putnee* —.—21 W. R. 369.

86. Where irregularities were alleged in the mode of enforcing attachment and making proclamation of —, the Judge was required to go fully into the case and determine whether the debtor had sustained substantial injury.—6 W. R., Mis., 44.

87. Objections by the judgment-debtor to a — in execution being made absolutely can be tried only under ss. 256 and 257 Act VIII, under which a — can be set aside only on the ground of irregularity in publishing or conducting the — and not on the ground of the illegality of the —.—6 W. R., Mis., 46.

Nor on the ground of fraud, which forms a distinct cause of action.—8 W. R. 506, 11 W. R. 244. *See also* 19 W. R. 414.

88. A default under s. 251 Act VIII is not an irregularity in conducting the — under s. 256.—6 W. R., Mis., 82.

89. The irregularities referred to in s. 256 are irregularities at the — and not after.—*Ib. See also* 25 W. R. 97.

90. An objection by the representative of a deceased person that he has taken nothing by inheritance, is not an irregularity contemplated by s. 256, and must be raised before the — in execution has taken place, otherwise the objector must seek to set aside the — by suit in the Civil Court.—6 W. R., Mis., 116.

91. An application for the reversal of a — cannot be entertained under s. 256 if made after 30 days from the date of —.—6 W. R., Mis., 122.

92. On an application to set aside a — under s. 256, before ascertaining whether any substantial injury has accrued to the debtor, the Court must come to a distinct finding that there has been an irregularity in publishing or conducting the —.—6 W. R., Mis., 125. *See also* 20 W. R. 424.

93. A bid for a property put up to — in execution of a decree held by B, and the lot was knocked down to him. The next day the property was sold in execution of a decree held by C who had a previous lien on the estate. The property having been resold under s. 254 Act VIII for a less sum than that bid by A, he was held liable for the difference.—6 W. R., Mis., 126. *See* 21 W. R. 149.

94. The right to hold *nij-jote* lands necessarily passes with the — to the auction-purchaser.—7 W. R. 40.

95. In case of default under s. 254, it is only the deposit which can be forfeited, not any right which the decree-holder may have under his decree.—7 W. R. 110. *See* 21 W. R. 119.

96. When the tenure of a tenant admittedly in possession is sold (under s. 105 Act X) in execution of a decree for rent, he has no right to sue for the reversal of the —. If a stranger to the former proceedings appears to urge his claims before the Collector under s. 106 and is overruled, he can sue within a year of the Collector's decision; but if he does not do so, there is nothing to prevent his suing in the ordinary way in the Civil Court.—(F. B.) 7 W. R. 183. *See also* 9 W. R. 286, 363.

97. A — under s. 105 Act X of 1859 is not free from incumbrances created by the defaulter.—(F. B.) 7 W. R. 260, 285. *See* 10 W. R. 220, 15 W. R. 11, (F. B.) 21 W. R. 94.

The above ruling was affirmed by the Privy Council as to sales under the Regulations (*e.g.* VII of 1799 and VIII of 1819).—17 W. R. 197.

98. Sales of under-tenures under Act VIII of 1835 for arrears of rent, are required to be according to the procedure prescribed by s. 2 of that Act, and not that laid down in Reg. VII of 1799.—7 W. R. 297.

99. Proof of irregularity in publishing the processes of — under s. 104 Act X is not sufficient to render the decree-holder liable to damages, without proof that such irregularity was caused by him.—7 W. R. 307.

SALE (*continued*).

100. If a — takes place in execution of a decree in force and valid at the time of —, the property in the thing sold passes to the purchaser. If the decree or judgment be afterwards reversed upon appeal, the reversal does not affect the validity of the — or the title of the purchaser.—7 W. R. 312, 8 W. R. 300, 12 W. R. 508. *See also* 19 W. R. 234. *See* 149 *post*. *But see* 22 W. R. 452.

So also if the decree be set aside upon review.—10 W. R. 154. *See* 15 W. R. 365, 22 W. R. 452.

101. A — made under a contract that the purchase-money shall be paid afterwards, may be complete though the deed in evidence of the contract is not completed. The non-registration of the deed would not annul such —.—7 W. R. 317.

102. Act VIII of 1835 merely changes the course of procedure of sales in certain cases and does not give the purchaser of a holding in a khas mehal the position or privileges accorded by ss. 37 and 52 Act XI of 1859.—7 W. R. 318.

103. A shareholder is not precluded from purchasing the whole of a *howala* tenure sold for arrears of rent due from himself and his co-sharer.—7 W. R. 318.

104. Under Act VIII of 1835 no separate attachment of a mehal, or notification of — in the Mofussil, is necessary to render a — valid.—7 W. R. 409, (*over-ruled by P. C.*) 17 W. R. 197.

105. The postponement of a — from a holiday to the next advertised — day does not require a new distinct notification.—*Ib.*

106. A — for arrears of rent is not invalid because it is not for the full year's arrear.—*Ib.*

107. Fraud or collusion justifies a — in execution being set aside.—*Ib. See also* 10 W. R. 362. *But see* 12 W. R. 48.

108. Attachment by the appellant of a sezawal, is no bar to a — for arrears of rent due before such attachment.—*Ib.*

109. A — of an under-tenure under Act VIII of 1835 was set aside on the ground (*inter alia*) of non-tender of arrears of rent due.—*Ib.*

110. In a suit to set aside a — in execution where the only question raised in the first Court was whether certain persons had *bonâ fide* conveyed certain shares in the estate purchased by the decree-holder previously to the passing of the decree, it is not competent to the Lower Appellate Court to enquire into the title or interest of any shareholders (not parties to the suit) as adverse to those of the decree-holder.—7 W. R. 412.

111. Where a portion of attached property is sold by the judgment-debtor, and a part of the proceeds paid on account to the judgment-creditor who withdraws from the execution, the — is not invalidated by the attachment.—7 W. R. 430. *See* 11 W. R., O. J., 1.

112. Any — of property after attachment is illegal under s. 240 Act VIII.—7 W. R. 510.

113. An attachment is not always an essential preliminary to a — in execution, and the judgment-debtor cannot object that his property has been sold without being first attached.—8 W. R. 9. *But see* 29 *ante*.

114. Where a decree was for arrears of rent due on a tenure, the tenure itself is sold, and all the co-sharers are jointly liable.—8 W. R. 60.

115. A civil action will not lie to reverse a — of property carried out under s. 185 Act XXV of 1861.—8 W. R. 207.

116. A zemindar having a decree for rent against a registered tenant, may proceed to — under s. 105 Act X, although the tenure was purchased after the date of the decree at a — in execution of a decree of the Civil Court.—8 W. R. 384. *See* 13 W. R. 449, (F. B.) 21 W. R. 94, 23 W. R. 289.

117. Where certain persons convicted of a criminal offence, in order to avoid apprehension, entered into a compromise with complainant, and agreed to pay him a sum of money as compensation, but in lieu of money sold him some property, the — was held as not made under illegal pressure.—8 W. R. 412.

118. S. 11 Act XXIII of 1861 and ss. 256 and 257 Act VIII do not apply to a suit in which fraud is imputed vitiating the — *in toto*.—8 W. R. 506.

119. A putnee tenure sold under s. 105 Act X passes free of incumbrance or otherwise, according as it would have done if sold under any law in force at the time of the passing of Act X.—8 W. R. 507, (*reversed by P. C.*) 21 W. R. 324.

120. Where the property of A is sold in execution of a decree against B, the — is not an irregularity within the meaning of s. 252 Act VIII; A may sue for his property or for damages or in the alternative.—9 W. R. 118. *See* 14 W. R. 120.

121. Omission to comply with all the directions regarding verification does not vitiate a — under Reg. VIII of 1819, when the Court finds that the notice presented in cl. 2 s. 8 has been duly served.—9 W. R. 242, (*approved by P. C.*) 23 W. R. 113. *See* 11 W. R., P. C., 5; 13 W. R. 314.

It would be no sufficient plea or substantial cause of complaint that the receipt of the notice referred to in s. 8 had been obtained or that the notification had been published on, instead of previously to, the 15th of Bysack.—24 W. R. 453.

The objection as to the notice must be one of substance and not merely of form.—24 W. R. 129. *See also* 25 W. R. 141.

122. If a party's rights and interests in a decree are sold at a time when all his assets are vested in the Official Assignee, nothing passes to the purchaser.—9 W. R. 372.

123. Where a decree held by judgment-debtors against a third party, after being sold by them to plaintiffs, is attached and sold in execution of the decree against them, no damage is done to plaintiffs, as at the time of the second — the judgment-debtors had no rights or interests in the decree, and the auction-purchaser took nothing.—10 W. R. 66.

124. A party selling land may refuse to give delivery till consideration is paid; but having given delivery, he cannot retake it, and pay himself out of the usufruct.—10 W. R. 194.

125. A Deputy Collector has only power under Act X of 1859 to sell in execution of a money-decree such moveable property as is capable of being manually seized, and he can issue process against immoveable property of any kind only when recourse cannot be had to seize the person or to sell such moveable property as is already mentioned.—10 W. R. 224. *See* 57 *ante*.

126. There is no power under Act X of 1859 given to the Collector to sell rights in suits *quâ* rights of suits alone.—*Ib. See* 12 W. R. 378, 13 W. R. 401.

127. A — in execution cannot be set aside on the ground that the party whose right, title, and interest were sold had no interest at all or had a less interest than was supposed.—10 W. R. 365.

128. Under s. 105 Act X a Revenue Court can only seize and sell that which at the time is the property of the judgment-debtor.—10 W. R. 434, 15 W. R. 341, 17 W. R. 417. *See* 13 W. R. 449, (F. B.) 21 W. R. 94, 22 W. R. 196.

129. The confirming or not of a — of land in execution of a decree was held to be within the discretion of the Court below, whose order was not appealable and could not be interfered with by the High Court.—11 W. R. 23. *See also* 14 W. R. 44.

130. Looking to the terms of s. 8 Reg. VIII of 1819, it was held to be an object of the Legislature to provide a sufficient notice to a defaulter before — of his tenure, 15 days' time (but not less) being considered sufficient; and without such notice no — can be said to have been duly held.—11 W. R. 87, 14 W. R. 489.

131. S. 151 Act X does not bar a suit in the Civil Court under s. 107 by a plaintiff whose objection under s. 111 to a — under s. 110 has been over-ruled.—11 W. R. 260. *See* 16 W. R. 93.

131*a*. No distinction can be made between a person claiming under an execution — as contra-distinguished from a person claiming under an ordinary conveyance.—(P. C.) 11 W. R., P. C., 29; 20 W. R. 114.

132. A purchaser at an auction — in execution of a decree under Reg. VII of 1825 or Act VIII of 1859 can recover back his purchase-money from the decree-holder only where the — is set aside summarily for irregularity or the like under cls. 3 and 4 s. 4 of the Regulation or ss. 257 and 258 Act VIII, but not when a third party succeeds in establishing his title to the property on the ground that the — did not affect the property and when there is no allegation of fraud or misrepresentation on the part of the decree-holder.—(F. B.) 12 W. R. F. B. 8. *See* 12 W. R. 48, (O. J.) 19 W. R. 16, *Ib.* 351, (P. C.) 23 W. R. 305.

133. S. 257 Act VIII does not bar the representative of a

SALE (*continued*).

judgment-debtor from suing to set aside an execution —, except on the ground of the — having been irregularly conducted.—12 W. R. 41.

134. A certificate of — need not be cancelled in so many words when the proceedings in execution under which the — was held have been set aside as without jurisdiction.—12 W. R. 72.

135. Where the holder of two decrees attaches property in execution of one of them, he has a right to state in the notification of — that he likewise claims the same property in satisfaction of his second decree.—12 W. R. 79.

136. Where the — in execution of two out of three parcels of land is confirmed before the appeal comes on for hearing, and the Appellate Court, in ignorance of the fact, remands the case with a view to a determination of the title of the objectors,—*Held* that the — cannot be set aside, but that before the third parcel is sold, the issue referred to the Lower Court by the remand order should be tried. —12 W. R. 201.

137. In s. 248 Act VIII the words "whom the Court may appoint" to sell property in execution, apply not only to the words "any other person," but also to the words "an officer of the Court"; and the Judge cannot, as superior officer, be said to be the Court instead of the Subordinate Judge, in consequence of the illness of the latter.—12 W. R. 238.

138. Where property is advertized to be sold in execution, a change in the specified order of —, without notice to intending bidders or the consent of the judgment-debtor, is an irregularity under s. 256 Act VIII.—12 W. R. 281.

139. Surplus proceeds of — in execution of decree deposited in Court can only be paid to the party in whose name the money stands or to his agent.—12 W. R. 352.

140. The object of the proclamation of — under s. 249 Act VIII is to give notice to intending purchasers and not to the judgment-debtor.—12 W. R. 488.

141. The selling of several properties in a lump instead of in separate lots, is *per se* an irregularity in the conduct of the — which causes damage to the judgment-debtor under s. 256 Act VIII.—12 W. R. 492, (*over-ruled*) 13 W. R. 209. *See* 185 *post.*

142. Where a widow's estate is sold for arrears of rent, the reversionary heir cannot follow the estate after her death.—12 W. R. 504. *See also* 15 W. R. 264, 329; 23 W. R. 174, 404. *See* (P. C.) 24 W. R. 306.

143. Where the fact of an execution — taking place two hours before the time announced is alleged to have been prejudicial to the judgment-debtor, the Court must determine whether the irregularity was of a material kind.—12 W. R. 511.

144. At a — of the confiscated property of rebels to the highest bidder, the Government cannot, subsequent to the bid and the deposit of the earnest-money, impose any condition not contained in the original notice of —, but is bound to make over possession to the highest bidder, whatever his character may be; the Government, in selling as aforesaid, does not perform an act of State, but stands in the situation of an individual selling his property by auction, and is liable to be sued by the purchaser if it refuses to give up possession or transfer the possession.—(P. C.) 13 W. R., P. C., 4.

145. No attachment is necessary previous to the — of a share of an estate under s. 110 Act X, and therefore such a — by the Civil Court is not null and void owing to the existence of a prior attachment by the Collector.—13 W. R. 173.

146. S. 110 Act X does not apply to the procedure by which parties obtain a remedy for an improper —, and has no reference to s. 256 Act VIII.—13 W. R. 222.

147. Where an application to cancel a — does not mention the specific grounds contemplated in ss. 256 and 257 Act VIII, the absence of such specification does not take away the jurisdiction of the Judge to enquire into the matter.—13 W. R. 250.

148. Where a Judge in such a case sets aside a — after finding material irregularity and substantial injury, the finding is final and cannot be questioned by the High Court in the exercise of its extraordinary jurisdiction.—*Ib.*

149. A — in execution of a decree is vitiated by the circumstance of the decree being at the time of — invalid (*e.g.* barred by limitation).—13 W. R. 273. *See* 100 *ante.*

150. The fact of the day fixed for a — in execution being very near to the latest safe day for the payment of the Government revenue was held to be no sufficient cause for staying the —.—13 W. R. 281.

151. The proper procedure in the case of an "under-renter" under s. 25 Reg. VII of 1799 who defaults, is — of his land at the end of the year.—13 W. R. 302.

152. At a — in execution under Act VIII of 1865 (B. C.), the whole tenure passes, unless there is some reservation made at the time of —.—13 W. R. 304, 433.

And the purchaser acquires it free of all incumbrances.—15 W. R. 99, 360. *But see* 164 *post.*

153. In execution of a decree for rent under Act X, a Collector has power to sell the judgment-debtor's right to recover rent due from an under-tenant.—13 W. R. 401.

154. Where a tenure is duly sold for arrears of rent under Act X of 1859 and Act VIII of 1865 (B. C.), the absence of a shareholder's name from the proceedings does not as a matter of law invalidate the — against him.—14 W. R. 30.

155. Where the Sudder cutcherry of the zemindar was beyond the jurisdiction of the District Court, the publication of the notice of — at one of the inferior cutcherries was held to be legal and sufficient.—14 W. R. 44.

156. A decree-holder who has caused the — of moveable property not belonging to his judgment-debtor, though he has done so in perfect good faith, is liable to make good the value of that property to its rightful owner.—14 W. R. 120.

157. Where a mokurrureedar of land sold to satisfy a debt sues to obtain possession, and the purchase is found to be not *bonâ fide* but for the party in actual possession, s. 260 Act VIII is no bar to the suit, the ground of fraud alone giving plaintiff a right to question the legality of the suit.—14 W. R. 179.

157*a*. Where at a fraudulent — in execution of an *ex-parte* decree for rent passed by a Revenue Court, the decree-holder purchased the land in dispute, and the tenants brought a suit to set aside the — and decree,—*Held* that the High Court could, on a ground of equity, interfere in special appeal, without going the length of setting aside the —, to direct a reconveyance of the property to the plaintiffs and the refunding by them of the purchase-money.—14 W. R. 159, 20 W. R. 333.

158. In a suit to set aside an execution — on the ground of fraud, it is not sufficient for the Court to find that the mode of making the attachment and proclamation was according to law, but it is necessary to consider the surrounding circumstances.—14 W. R. 325.

159. The fact of a judgment-creditor bidding at a judicial — without the leave of the Court does not *ipso facto* invalidate the —.—14 W. R. 405, 15 W. R. 368. *See* 84 *ante.*

160. Where a sharer in an undivided talook, after obtaining a decree for money due to him on account of his share of the rent, brings to — only a portion of the tenure corresponding with the share of the rent for which he obtained a decree, the — has no further effect under s. 108 Act X than any other — in which the rights and interests of the judgment-debtor are sold.—15 W. R. 6. *See* 18 W. R. 205, 22 W. R. 421.

And cannot prevail against a prior — of the same rights and interests in execution of a Civil Court decree. —17 W. R. 352.

161. When a tenure was sold for arrears of rent under Act VIII of 1865 (B. C.), the fact of no notice having been served in the Mofussil was held to be sufficient ground for setting aside the —.—15 W. R. 17.

162. An appeal to the Collector under s. 13 of the same Act is not necessary as a condition precedent to a suit in a Civil Court to set aside the —.—*Ib.*

163. The — of property while under attachment cannot be made valid by the subsequent release of the property from attachment.—15 W. R. 222.

164. Where the rights and interests of a judgment-debtor are sold in execution under Act VIII of 1865 (B. C.) the tenure itself does not pass, much less does it pass free of incumbrances, and the purchaser is not entitled to eject tenants who have been occupying and cultivating the land for more than 12 years.—15 W. R. 234.

165. The purchaser of a shareholder's rights acquires no right to retain possession against a person who buys the tenure itself when sold for arrears under Act VIII of 1865 (B. C.).—15 W. R. 319.

SALE (*continued*).

166. Where a joint decree for contribution, passed against a Hindoo widow and the reversioner, was executed against the latter as the sole surviving judgment-debtor, the — of his rights and interests was held to have passed the joint property, even though the certificate of — omitted the word "property."—15 W. R. 329.

167. The purchaser of a tenure under Act VIII of 1865 (B. C.) can avoid the rent-free holding of the purchaser of a portion of the tenure.—15 W. R. 360.

168. Where a tenure is sold under Act VIII of 1865 (B. C.) even though no arrears were due when the decree was obtained, before the purchase can be set aside, the decree and — must be shown to have been fraudulent, and the purchaser to have been a party to, or to have had notice of, the fraud.—15 W. R. 365. *See also* 24 W. R. 260.

169. All sales by Small Cause Courts should be conducted strictly in accordance with s. 251 Act VIII; but where property of small value, sold in execution of a decree of considerable amount, is purchased by the decree-holder, his receipt may be accepted as cash.—15 W. R. 368. *See also* 16 W. R. 46.

170. Ss. 106 and 107 Act X apply only to cases in which the existence of the under-tenure and the decree-holder's right as landlord are admitted, and not where they are denied and an adverse proprietary title is set up by the claimant as owner of the land.—16 W. R. 1.

171. An execution-creditor attaching an estate paying revenue to Government is not obliged to insert in the notice of — the names of all appurtenances, such as *aslee* and *dakhilee* mouzahs.—16 W. R. 149.

172. Where a suit to set aside the purchase of immoveable property made long before is brought after the death of all the parties who could have explained the transaction, the evidence must be looked at with great jealousy.—(P. C.) 17 W. R. 259.

173. A party cannot complain of the postponement of a — in execution to the day following, unless he can show that he has suffered substantially thereby.—17 W. R. 278.

174. A decree-holder (A) sold in execution certain lands belonging to the judgment-debtor, but before being allowed actual possession, she was required to give security for the proceeds of the —. Some time elapsing before she found the security, the lands were attached and sold in execution of R's decree, and purchased and taken possession of by him. *Held* that A's omission to give security could not affect her title by the previous —, and that the order for the second — was an error.—(P. C.) 17 W. R. 289.

175. A judgment-debtor is entitled to prove, when his property has been sold without further notice on a date subsequent to that originally fixed, and especially when the execution-creditor is the purchaser for a very inadequate value, that he has been substantially injured by such —.—17 W. R. 339.

176. Personal service of notice of — on a defaulting putneedar is not a sufficient service under cl. 2 s. 8 Reg. VIII of 1819; the notice should be stuck up on the cutcherry of the Collector and copy published either at the defaulter's cutcherry or at the principal town or village on his land.—17 W. R. 447.

177. Upon default of debtors to pay by certain instalments for which they had pledged their property and had prayed that the decree might be drawn up accordingly, the effect of the decree and the — thereunder was to make the property liable for — in liquidation; the — passing the property as it stood at the time it was originally mortgaged.—17 W. R. 480.

178. Where the whole of a property was sold in execution, the purchasers agreeing as to shares, the Court was unable, because of the apparent misconduct of one of the purchasers, who, after having acted as pleader for the opposite party, had now become one of the purchasers, to limit the extent of that — or to set aside the plaintiff's title.—*Ib.*

179. The period of 30 days mentioned in s. 256 Act VIII is the measure of the right of the parties to come in and object to the —. Under s. 257, however, the jurisdiction of the Judge is not limited to that period, but the Judge may receive such an application at any time before the confirmation of —.—18 W. R. 11. *See* 18 W. R. 333.

180. Parties present at a — in execution are not bound to refer to the decree, nor must they be considered as knowing its contents; the proclamation and notification under s. 249 Act VIII being intended to inform persons what is to be sold and whose rights and interests.—18 W. R. 55. *See* 21 W. R. 93.

181. The market value of property is not to be taken as a standard at a — in execution of a decree.—18 W. R. 197.

182. An agreement entered into by a lessee with another person to get rid of his lease by means of a fictitious sale for arrears of rent, and to share the profits of the transaction, is a fraud against the lessee. The person with whom such an agreement is made has not the rights of an auction-purchaser under Act VIII of 1865 (B. C.), but only those of a private purchaser.—18 W. R. 240.

183. There can be no analogy between a — under Reg. VII of 1825 (in which the rights and interests of the judgment-debtor whatever they might be are put up for —), and a — under Reg. VIII of 1819 where there is an implied warranty on the part of the zemindar to give possession to the purchaser.—18 W. R. 276.

184. The inchoate owner of an estate purchased by him at a — in execution is justified (pending proceedings with regard to the validity of the —) in preserving the estate from — to another; and if the — to him is set aside, is entitled to any amount *bonâ fide* paid by him for such preservation; his remedy lying against the party to whom the estate is restored.—18 W. R. 289.

185. Where 6 separate tenures were sold as one lot, whereby plaintiff and his co-sharers were precluded from purchasing, and no description of the properties to be sold was given, the — was reversed as fraudulent and illegal.—18 W. R. 312. *See* 141 *ante*.

186. Where a — was notified to take place on the 8th, and on that day the order for the postponement of the — to the 9th was made in open Court,—*Held* that that was a sufficient notification of the — being held on the 9th, and that a fresh notice was not necessary.—18 W. R. 347.

187. Where an execution — is postponed at the instance of the judgment-debtor or with his consent, the omission to publish a fresh notification is not a material irregularity.—18 W. R. 511.

188. The — of property under attachment, as to which an objection has been entertained judicially under s. 11 Act XXIII of 1861, is one *pendente lite*, and as such subject to the final result of the suit between the parties.—19 W. R. 197.

189. In order to realize the amount of his decree against R, S caused R's rights and interests in certain surplus proceeds of property sold (under Act XI of 1859) for arrears of Government revenue (which surplus was in deposit with the Collector) to be attached and sold. Plaintiffs purchased R's rights and interests and paid the money into Court, which money was taken out by S and others in satisfaction of decrees against R. On plaintiffs applying for R's share in the surplus, they learnt that the — for arrears of revenue had been set aside, and now sue for refund of the purchase-money with interest. *Held* that the rule applicable to this case was that applied by Courts of Equity where vitiated sales are set aside, viz. that, as the transaction ought never to have taken place, so the rights of the parties ought, as far as possible, to be placed in the position in which they would have stood if there had never been any such transaction; and that the purchaser was in the situation of a mortgagee so far as he had made payments in consequence of the — which payments were not voluntary, and was entitled to recover his claim with interest; but that, in the event of an appeal to the Privy Council against the order setting aside the Government — proving successful, plaintiff would not have any rights in consequence.—19 W. R. 351.

Over-ruled by the Privy Council who held that the above rule was not applicable to this case, inasmuch as the rule proceeds upon the doctrine of equity that a plaintiff who comes to be relieved from his own act, or the act of one whom he represents, on equitable grounds, must do equity and submit to those equitable conditions which the Court may see fit to impose on its grant of relief, whereas in this case the purchaser was not seeking the aid of the Court, but was sued as a defendant for money paid, not under any contract of his or in any transaction to which he was a consenting party, but under proceedings taken *in invitum*; and that plaintiff having bought R's interest in the —

SALE (*continued*).

proceeds subject to the contingency of his succeeding in his suit to set aside the revenue —, in which event that interest would be *nil*, there was no general equity existing between the parties upon which defendant ought to be compelled to restore plaintiff to his original position, because the event on which plaintiff speculated had gone against him.—(P. C.) 23 W. R. 305.

190. Where an estate, which is entered on the *towjee* of the Collectorate of a district, consists of villages of which only the greater number are situated within that district, it may, for the purposes of attachment and — in execution of a decree, be considered as wholly situated in that district, and be so dealt with by the District Court.—19 W. R. 434.

A Court having local jurisdiction is competent to sell in execution one or more outlying portions of an estate even though the greater portion of that estate is not within its jurisdiction.—23 W. R. 154.

191. Where a judgment-creditor attached certain property in execution of a decree passed after the mortgage of the property by a bond, and before its — in execution of a decree passed on that bond,—*Held* that he had a right to sell the rights and interests of his judgment-debtor in the property, and was entitled to keep the money which saved the —.—20 W. R. 19.

192. Plaintiff came into Court to follow into the hands of the defendant certain property to which the latter had by transfer acquired the title of the purchaser at an auction — held in June 1843. The ground of his claim was that the late owner who died before the — had left his widow a permission to adopt a son, and thereupon in 1856 she had adopted plaintiff; that the — was of the widow's interests merely, the permission to adopt having given her, in the event of an adoption, a life-interest in the property; and that upon her death in 1865 his interest accrued. *Held* that as the proceeds of the execution — were not applied to satisfy only a liability incurred after the owner's death, but also decrees for other debts for which the estate was liable, there was no substantial ground to impeach the long title acquired by the defendant.—(P. C.) 20 W. R. 30.

193. Where an under-tenure has been transferred, but the transfer is not registered in the sherista of the zemindar or superior tenant, the transferee is nevertheless entitled, as a person interested in the protection of the tenure, to stop its — in execution of a decree under Act VIII of 1865 (B. C.) by paying into Court the amount of the decree; though he is not entitled, unless the transfer is registered, to come in and allege that the person against whom the decree has been obtained was not the proprietor of the under-tenure and was not in legal possession.—20 W. R. 59. *See* (F. B.) 21 W. R. 94. 22 W. R. 46.

194. The party purchasing at an execution — in the character of an agent cannot be made liable as a principal; and if a re-sale should become necessary, a proceeding upon the contract under s. 254 Act VIII for the difference between the first and second sales must in such a case be taken against the principal.—20 W. R. 80, 397.

195. A — in execution of a decree under Act VIII of 1869 (B. C.) can be postponed at the discretion of the Court only when the postponement is shown to promise benefit to the judgment-debtor, without causing serious prejudice to the decree-holder.—20 W. R. 130.

196. It is a far more exact compliance with the spirit of Reg. VIII of 1819 to serve the notice which it enjoins at the place in which the defendant's gomashta was transacting and did habitually transact business, than at the cutcherry which had not been in use.—20 W. R. 132.

197. The prohibition against alienation, which is involved in an attachment, avoids the conveyance only as against the execution-creditor, or some person entitled to claim under him.—(P. C.) 20 W. R. 133.

198. A conveyance executed by the judgment-debtor after one attachment has been permanently struck off and before a new attachment is issued, is valid.—(P. C.) *Ib.*

199. No Court of Equity ought to direct hypothecated property to be sold, and its grounds applied to the satisfaction of the debt for which it is security, without first taking care to ascertain that the debt stated to be due is really due.—20 W. R. 253.

200. A certificate of — held in satisfaction of a decree for costs made against certain parties personally, can lawfully pass only property belonging to them, but not property inherited by others as co-heirs with them.—20 W. R. 483.

Before it can be said that the — certificate covers more than the share of the individual debtor, it must be shown that it was the intention of the creditor and of the Court holding the — to deal with something more than that particular share.—25 W. R. 303.

201. Where a mortgagee having petitioned for — under a foreclosure decree, E and P came forward to claim under conveyances made by the judgment-debtor *pendente lite*, and the Moonsiff ordered the — of the rights and interests of the judgment-debtors,—*Held* that the — was inoperative and the Moonsiff's order inapplicable, and that the decree-holder had a right to the property sold which had been originally pledged to him; also that E and P could only take the property as subject to the rights of the parties to the suit, and that the Moonsiff should have treated them as the judgment-debtors.—21 W. R. 14.

202. Taking ss. 105 and 106 Act X of 1859 together, it was intended that the zemindar should be at liberty to treat as the holder of a transferable tenure, and as the person whom he might sue for arrears of rent, the person who is registered in his books as the owner, unless anyone could show that there had been a transfer and that there was sufficient cause for its non-registration; so that the zemindar, having obtained a decree for arrears of rent, is entitled to sell the tenure, and the person who has obtained a transfer which he has not registered, and cannot show a sufficient cause for not registering it, is bound by the — and cannot set up a title which he has acquired by a previous —.—(F. B.) 21 W. R. 94. *See also* 22 W. R. 196.

The principle of the above decision applies to sales under Act VIII of 1869 (B. C.).—25 W. R. 395.

The above decision, according to which the right of a purchaser in execution of a rent-decree prevails over that of an earlier purchaser, has no application to the case of a — under s. 64 Act VIII of 1869 (B. C.) which provides for the — not of the tenure, but of the right, title, and interest of the judgment-debtors.—22 W. R. 67.

203. An objection to the sufficiency of the notice of execution was not allowed to be taken after the — in execution, where the process of execution was known to the judgment-debtor.—21 W. R. 148.

204. Where the purchaser of property sold in execution failed to pay up and the Moonsiff allowed the property to be sold again and directed the debtor, in the event of the property fetching a less price than at the former —, to realize the difference from the first purchaser, the Moonsiff's order was held rightly set aside in appeal on the ground that the defaulting purchaser was not before the Court.—21 W. R. 149.

205. Where a decree-holder on selling the first of several attached properties finds the price sufficient to cover his debt and proceeds no further, and the purchaser fails to pay up, the judgment-creditor may proceed on his decree against any other property of the debtor. —*Ib.*

205*a*. In an execution — under a decree against K and D upon a debt due by D's father, where, according to the — certificate, only K's rights and interests appeared to have been expressly passed, and the judgment-creditor took possession of the entire property without complaint from D, and many years after D's death her heirs sold a share of the property to the plaintiffs who sued for possession,—*Held* that the plaintiffs obtained no immediate right to the property by the conveyance from D's heir.—21 W. R. 156.

206. Where an execution — has taken place, the second attaching creditor and others are equally entitled, under s. 271 Act VIII, to a rateable distribution of the surplus proceeds: no other than the first attaching creditor having any right to have his claim satisfied in full.—21 W. R. 194.

207. S. 257 Act VIII does not contemplate the case where a — is pretended to be made by a Court which has no jurisdiction to make it at all.—21 W. R. 291.

208. A decree having been obtained by a zemindar for arrears of rent of a *putnee* talook, it was held that under the description "putnee" and "dur-putnee" the *primâ facie* intention was that the tenure called a *putnee* tenure was transferable by —, and was one upon which the right to sell for arrears of rent was reserved in the engagement interchanged upon the creation of the tenure. Consequently, according to the effect of s. 105 Act X of 1859, ss. 8 and 11

SALE (*continued*).

Reg. VIII of 1819, and probably also of Reg. I of 1820, the — of the *putnee* destroyed all incumbrances created by the putneedar, *e.g.* a *dur-putnee*.—(P. C.) 21 W. R. 324.

209. The sending a man to bid at an auction, — cannot be considered as conduct calculated (in the language of s. 237 Act IX of 1872) to induce persons to believe he had general authority to buy.—(O. J.) 22 W. R. 156.

210. The Court refused to go to facts lying behind a — certificate for the purpose of contradicting its terms.—22 W. R. 181.

211. The — of the right and interest of one proprietor in execution of a decree for rent does not convey the right and interest of other proprietors, although they may be as much liable as the first for the arrears of rent.—22 W. R. 187.

212. A — effected by the decree-holder in execution of a decree on a mortgage-bond, is subject to all valid liens of prior date subsisting on the same property at the time of — ; but later liens must be postponed to that of the earlier decree-holders.—22 W. R. 322.

213. Where a decree-holder obtains an order for the — of his judgment-debtor's interest in certain property, and becoming purchaser at the — which follows, receives a — certificate going beyond the order, he cannot avail himself of anything in the certificate beyond the order. But if he obtains possession according to the certificate and sells to a *bonâ fide* purchaser without notice of the difference between the certificate and the order of —, the latter has a good title.—22 W. R. 408.

214. Where a suit for rent and the balances due under the decree were on account of a 7-anna share of a tenure and the certificate of — held under Act VIII of 1865 passed the right and interest of the defaulting under-tenant,—*Held* that s. 108 Act X was applicable to the case, and that such right and interest only, and not the whole tenure, became vested in the auction-purchaser.—22 W. R. 414.

215. The law only forbids transfer of property after it has been attached, and not the — of it before attachment.—22 W. R. 473.

216. An execution —, properly notified, may be adjourned with the consent of the parties.—22 W. R. 481.

217. The issue of a notice of — after the death of the original decree-holder, and before any person had applied to be registered as the substituted decree-holder, is not an irregularity which would warrant the setting aside of the — under s. 256 Act VIII.—*Ib.*

218. Where an under-tenure is sold under Act VIII of 1869 (B. C.) in execution of a decree obtained by the zemindar for rent due to him as the separate proprietor, after *butwarra* of a share of the talook in which the tenure is situated, the — is properly conducted, not under s. 64, but under s. 59.—22 W. R. 530.

219. It is within the discretion of a Judge to direct the — of property in portions though it has been attached and proclaimed as an entirety; and as it is damage to a person to sell his whole property against his will to satisfy the claims of a creditor when the — of a portion would suffice, the — can be set aside under s. 256 Act VIII on the ground of irregularity as having caused material injury to the judgment-debtor.—23 W. R. 1. *See* 23 W. R. 393.

220. J, as the executor of his deceased father S, obtained a decree which he held in trust for S's heirs, namely, himself and brothers. One of the brothers (H) died, leaving J and M his executors. M then sold to J the interest of H's sons for an inadequate consideration. *Held* that, according to the rules of equity, the — could not stand; but that J was bound to return to H's sons their share in that estate, upon receiving back the purchase-money; and that the — was equally invalid against any other person for whose benefit the trustee (J) may have purchased secretly in his own name, as it would be against the trustee himself.—(P. C.) 23 W. R. 6.

221. A Moonsiff is not competent, under s. 286 Act VIII, to bring to — property lying without his own jurisdiction, without reference to another Court.—23 W. R. 233.

222. When a — is set aside under s. 256 Act VIII, the purchaser should get back the money laid out by him for the benefit of the estate in addition to his purchase-money and interest thereon, and should account to the judgment-debtor for the profits received by him. At the same time it will depend upon the circumstances under which the purchaser took possession, and the nature of his outlay, whether he ought in equity to be allowed to claim reimbursement of the money expended by him.—23 W. R. 393.

223. Where a purchaser *bonâ fide* took possession of the property and laid out money thereon because he thought that otherwise it would become worse than valueless,—*Held* that he was entitled to have it made a condition of setting aside a — under the above section that he be repaid so much of the outlay as he could show was beneficial to the estate, he accounting for the rents and profits realized by him.—*Ib.*

224. A — made by a guardian without the sanction of the Court required by s. 18 Act XL of 1858, is made without power, and is therefore invalid, even if the purchaser has acted honestly and paid a fair price.—24 W. R. 46.

225. In a suit to recover principal and interest on a bond which mortgaged the obligee's share in three villages (K, S, and P), the defence was that plaintiff had paid himself by becoming the purchaser, at a — in execution of another decree, of the obligee's rights in K at a price altogether inadequate to its fair value. It was found that, at the — in question, the small price bid was the result of the plaintiff's own statement that K was burdened with the debt due on his bond,—*Held* that, as plaintiff chose to give out to the world of buyers that he intended to burden the village K with the payment of the whole sum due to him, and took advantage of the lowness of the bids to buy the property himself, he could not now be allowed to proceed against the other properties.—24 W. R. 83.

226. Where a judgment-debtor objects to the — of attached property on account of various irregularities vitiating the —, it is the duty of the Judge to try the validity of the — with reference to the irregularities complained of, instead of ordering the — to be made with notice of the judgment-debtor's objections.—24 W. R. 85.

227. Interpretation of cl. 2 s. 8 Reg. VIII of 1819 as to the dates fixed for — and the era to be followed.—24 W. R. 129.

228. Where there is no tender before — of the amount of rent due, a — under Reg. VIII of 1819 cannot be set aside merely because some charges were included which might not strictly be recoverable under the Regulation, where the zemindar clearly distinguished the amount due for rent from such charges.—*Ib.*

229. When a mortgagee sues on his bond and takes a money-decree, in execution of which he attaches and sells the mortgaged property, he transfers to the purchaser the benefit of his own lien and the right of redemption of his debtor; but the transfer does not include ticcadaree rights if the ticcadar was not made a party to the suit on the bond.—24 W. R. 210.

230. Where the judgment-debtor made an application under ss. 256 and 257 Act VIII alleging that certain property belonging to him had been sold in execution without the process of attachment and notice of — having been duly issued and published, and these allegations were denied by the decree-holder and the auction-purchaser,—*Held* that the Judge was bound to enquire into the allegations of the respective parties.—24 W. R. 216.

231. Where a judgment-debtor's property is sold at the instance of the judgment-creditor, the —, whether directed by the decree or not, must be a — free of the judgment-creditor's rights in the property unless these are reserved.—24 W. R. 263.

232. Before an execution — of a village can be set aside on the ground of want of local jurisdiction in the Court which sold it, it must be found in fact and in law that the village belongs to another jurisdiction.—24 W. R. 443.

233. A Judge has no right to set aside a — under a decree upon the application of a third person who is not a party to the suit and in no way connected with the original proceeding.—25 W. R. 79.

234. Where property was sold in 1867 as ancestral property in execution of a decree in respect of a debt due, the judgment-debtor's son cannot 8 years afterwards sue to set aside the — on the ground that the property was his self-acquired property and not liable for the debts of his father.—25 W. R. 110.

235. The mere existence of creditors does not make it necessarily fraudulent on the part of the debtor to sell his

SALE (*continued*).

property, if he does really sell it for valuable consideration.—25 W. R. 119.

236. S. 11 Act XXIII of 1861 does not bar a suit by a judgment-debtor to recover possession of lands sold in execution of a decree for rent in contravention of s. 64 Act VIII of 1869 (B. C.), *i.e.* before the — of his moveable property, by establishing his right thereto and by reversal of the —.—25 W. R. 156.

237. The mention of the name of a wrong *pergunnah* in the notice of — was not held to be an irregularity under s. 256 Act VIII, when the notice was served in the right *mouzah* and the estate identified.—25 W. R. 326.

238. Where the circumstances on which plaintiffs relied to establish that a — in execution was not *bonâ fide*, the Judge was held to have been wrong in taking those circumstances one by one and dismissing them as not severally and separately amounting to fraud, instead of considering them collectively and seeing whether, taken together, and with reference to one another, they did not amount to an act of fraud such as was set up.—25 W. R. 364.

239. A misdescription in a — certificate may be rectified by extraneous evidence; according to s. 95 Act I of 1872, any evidence being admissible to show what was intended to be sold.—25 W. R. 401.

240. Specifying the amount of revenue assessed upon an estate to be sold, not correctly as required by s. 249 Act VIII, but at a lower figure than it really is, may be an error against the interest of the judgment-debtor, which, if the — is confirmed and he can prove that he has sustained actual damage by the irregularity, would be a sufficient ground for setting aside the confirmation upon an appeal against it. In the present case the judgment-debtor was held barred from objecting to the notification of — on the ground of error, as it appeared that in applying for a postponement of the —, he agreed to the attachment and notification being maintained.—(P. C.) 26 W. R. 44.

See Absconding Offender 8.
Adjustment 6.
Advancement 1.
Ancestral Property 2.
Appeal 4, 8, 20, 47, 50, 57, 60, 109, 110, 121.
Assignment 1.
Attached Property 5, 6, 9, 13, 16, 17, 23, 28, 49.
Auction-Purchaser (Execution Sale).
" " (Revenue Sale).
Benamee 1, 2, 5, 6, 30, 32.
Bill of Sale.
Bond 14, 20.
Cause of Action 11
Certificate 46.
Chürs 82.
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Contempt of Court 1.
" " Lawful Authority of Public Servant 1.
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Co-sharers 17, 19, 38*a*, 62.
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Declaratory Decree 43, 53.
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Easement 5.
Ejectment 24.
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" (Estoppel) 68.
" (Oral) 7, 10, 12, 18, 19, 20.
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See Forfeiture 13.
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" " (Coparcenary) 10, 21, 43, 49.
" " (Sale).
" Widow.
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Intervenor 34, 44.
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Limitation 43, 45, 65, 101, 114, 236, 251, 252.
" (Act XIV of 1859) 126, 154, 155, 185, 194, 198, 280, 285, 331.
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Lis Pendens 5.
Mahomedan Law 5, 20, 32, 33.
Manager 7, 9.
Mesne Profits 46, 47, 61.
Minor 2, 27, 38.
Money-Decree 6, 8, 9, 9*a*, 11, 12, 14*a*, 18, 19, 21, 24, 25.
Mookhtar 3.
Mortgage 10, 21, 35, 42, 43, 50, 63, 69, 75, 84, 88*a*, 122, 135, 136, 146, 147, 170, 172, 177, 225, 235, 237, 242, 269, 286, 292, 294.
Onus Probandi 35, 43, 66, 77, 110, 139, 149, 159, 176, 177, 189, 213, 215, 246, 254, 261, 276.
Partition (Butwarra) 22.
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" (Parties) 32.
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Pre-emption 11, 12, 38.
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See Service Tenure 12, 13.
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Special Appeal 41, 48.
Specific Performance 1, 9, 11.
Splitting Cause of Action 17.
Stamp Duty 65.
Streedhun 2.
Sub-talook 1.
Summary Order 1.
Talook 2.
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Under-Tenures 2, 3, 5, 12, 13, 14.
Vendor and Purchaser.
Voluntary Payment.
Waste Land 7.
Will 51.
Zur-i-peshgee Lease 36, 37.

Sale Law.

1. By Regs. XIV of 1793 and VII of 1799 a sale may be ordered for arrears of a monthly instalment of revenue before the close of the year: but in order to warrant that act, there must be an arrear of a previous year or of a monthly instalment.—(P. C.) 5 W. R., P. C., 11 (P. C. R. 63).

2. The existence of a written engagement or *kistbundee* is not a condition precedent to the right to enforce the payment of the revenue by monthly instalments, provided the monthly instalments be fixed and determined.—*Ib.*

3. By Reg. V of 1812, if there be an arrear of the annual assessment or of a fixed monthly instalment of that assessment unpaid on the first day of the following month, the Governor-General in Council may order a sale, and the Board of Revenue may direct the *whole* estate of the defaulting zemindar to be sold.—*Ib.*

4. Where the monthly instalments are fixed and determined, the Government does not forego the right of selling the estate on default being made to pay these instalments, by taking a bond from sureties by which their estates are rendered liable for the due payment.—*Ib.*

5. An unauthorized sale by a Collector for arrears of revenue of a whole talook in one lot, is not rendered valid by subsequent unauthorized confirmation by the Board of Revenue and acquiescence by the defaulting proprietor. —(P. C.) 6 W. R., P. C., 15 (P. C. R. 114).

6. Where a suit was brought in 1821 to annul the sale of a zemindaree which took place in 1802 for arrears of revenue, the Privy Council concurred with the Lower Court that the sale ought, notwithstanding the great lapse of time, to be set aside; but considering the *bonâ fide* character of the sale, awarded compensation to the purchaser.—(P. C.) 6 W. R., P. C., 27 (P. C. R. 129).

7. The object of s. 5 Reg. XLIV of 1793 taken together with s. 7, was not the destruction of the under-tenures upon the sale of the parent estate for arrears of Government revenue, but only to empower the purchaser at such sale to avoid the subsisting engagements as to rent, and to enhance the rent to that amount to which, according to the established usages and rates of the Pergunnah or District, it would have stood, had the cancelled engagement so avoided never existed.—(P. C.) 2 W. R., P. C., 13 (P. C. R. 548). *See* 11 W. R., P. C., 10, 12 W. R. 383, *ib.* (P. C.) 40.

8. *Quære.* Whether such a power is given only to the purchaser or to him and his heirs, or whether it is a power attaching to the zemindaree and passing to subsequent purchasers.—*Ib. See* 22 W. R. 29.

8*a*. A fraudulent sale for arrears of revenue must be considered as a private sale.—(P. C.) 5 W. R., P. C., 83 (P. C. R. 635). *See* 20 W. R. 333.

9. A sale of a tenure under Act VIII of 1835, for arrears of current revenue, conveys the whole tenure free from all incumbrances.—3 W. R. 197, 7 W. R. 243. *See* Sale 11.

10. Sales under s. 15 Reg. VII of 1799 and Reg. VIII of 1805, of a tenure for its own arrears, pass the tenure free from all incumbrances.—4 W. R. (Act X) 32, 7 W. R. 243.

11. Under Reg. XI of 1822, a *benamee* purchase for the defaulting proprietors at a sale for arrears of revenue, is not *ipso facto* illegal and void.—5 W. R. 154.

12. A sale for arrears of revenue under Reg. XI of 1822 cancels all arrangements entered into intermediately by former proprietors.—7 W. R. 196. *See* 13 W. R., P. C., 24, 25 W. R. 536.

13. The principle that purchasers of estates at Revenue sales acquire them free from all incumbrances and in fact in the same condition in which they were at the time of the Permanent Settlement, is equally recognized by Act XI of 1859 as by the laws previous to it.—8 W. R. 62, 222. *See also* 2 Hay 469.

14. The power of a purchaser at a Revenue sale to annul all incumbrances, is limited to purchasers of entire estates. —8 W. R. 68.

15. At a sale for arrears of revenue, the Collector is bound to sell to the highest bidder even though that bidder be the husband of the defaulter.—8 W. R. 372.

16. Where in such a case the Collector sold to the second highest instead of to the highest bidder, he was held liable, as the measure of the latter's loss, for the difference between the two bids and not the actual or probable value of the estate.—*Ib.*

17. Money deposited under s. 6 Act VIII of 1865 (B. C.) to protect an under-tenure from sale, is a loan to the proprietor of the tenure, which becomes security and of which the depositor may recover immediate possession by application (without a suit) under cl. 4 s. 13 Reg. VIII of 1819. —10 W. R. 205, (*over-ruled by F. B.*) 13 W. R. F. B. 1.

18. S. 21 Act I of 1845 and s. 36 Act XI of 1859 do not apply to a *benamee* purchase under Act XII of 1841.—11 W. R. 382, 13 W. R. 317.

19. A sale which is made when no arrears of revenue exist is absolutely null and void.—12 W. R. 276.

See Auction-Purchaser (Revenue Sale) 11, 14.
Certificate 107.
Ejectment 34, 74.
Enhancement 138.
Mortgage 241, 283.
Sale 34, 47.
" Law (Act I of 1845).
" " (Act XI of 1859).
" " (Act VII of 1868 B. C.).
Under-Tenures 6, 7.

Sale Law (Act I of 1845).

1. A person depositing money in the Collector's office under the pressure of s. 9, in order to save an estate from sale, does not thereby acquire any lien on the estate.— 2 Hay 75 (Marshall 226).

2. In order to protect auction-purchasers, a certificate under s. 20 is intended to give them statutory title, and to arm them by means of a formal document with powerful evidence of their title, and by this means either to establish their title as plaintiffs when seeking to assert their rights in a Court of justice under a purchase deed, or to reject an ejectment.—Sev. 773.

3. S. 21 is inapplicable to a suit brought to make void a pottah granted by the mother of a certified purchaser.— W. R. Sp. 353.

4. S. 21 does not protect purchases made in the name of third parties from the operation of decrees against the persons beneficially entitled to the purchased property.— 2 W. R. 29.

5. Act I of 1845 is not intended to protect a purchaser at a sale brought about by a preconcerted, fraudulent default.—8 W. R. 399.

6. No one should be allowed to take advantage of his own fraud even under a title from a Government sale for arrears of revenue.—*Ib.*

7. A purchase at a sale under Act I of 1845 by the managing member of a joint Hindoo family in his own name, but on behalf of the family, is not affected by s. 21; and the members may sue to enforce their rights though he is the sole certified purchaser.—13 W. R. 347, (*approved by P. C.*) 22 W. R. 199.

Sale Law (Act I of 1845) (*continued*).

See Auction-Purchaser (Revenue Sale).
Benamee 14, 22*a*.
Churs 10.
Ejectment 6, 52.
Embankment 1.
Enhancement 4, 47, 74, 202, 207.
Junglebooree Tenure 5.
Mortgage 95, 181.
Occupancy 3.
Onus Probandi 205.
Reversioner 8.

Sale Law (Act XI of 1859).

1. Definition of share under s. 10 and other sections.—1 W. R. 26 (3 R. J. P. J. 150).

2. The purchaser of an estate sold for arrears of revenue on the 29th Pous (the latest date of payment of the revenue due for the three months previous to Pous) is not entitled to recover from the defaulter the amount of revenue which he (the purchaser) was obliged to pay for the month of Pous.—4 W. R. 75.

3. The object of s. 54 is to protect only *bonâ fide* incumbrances executed in contemplation of an impending sale or in fraud of a possible purchaser. Where surrounding circumstances suggest such creation, it is for the party setting up the incumbrance to establish its *bonâ fide* character.—5 W. R. 1.

4. A sharer of a joint talook, whose share consists of a specific portion of land, can obtain protection from a sale for arrears of revenue only under s. 11. Common registry of the talook as a shikmee talook will not preclude any person thinking himself wronged by such registry from suing for the cancelment of the same.—6 W. R. 217.

5. An auction-purchaser under Act XI has no right to question the act of a single co-sharer in respect of a lease granted by him of land separately acquired by him under an arrangement made by the several coparceners by which such a lease by one of them was to be looked upon as the act of all.—6 W. R. 315.

6. S. 13 requires a sale to be confined to the share for which an arrear of revenue is due when a separate account has been *ordered* by Collector, not merely *applied for*.—7 W. R. 154.

7. The lease of a share is protected under s. 54.—7 W. R. 295.

8. A shareholder voluntarily paying an arrear of revenue due by a defaulting co-sharer who has a separate account, before such defaulter's share has been put up for sale, cannot claim reimbursement by such defaulter.—7 W. R. 365.

9. The object of Act XI is to give the purchaser a title which cannot be challenged. A sale may be set aside for irregularity under s. 25, or under s. 26 where hardship or injustice is disclosed.—8 W. R. 439. *See* 10 W. R. F. B. 66.

10. Where on petition to set aside a sale a Commissioner will not interfere, the aggrieved party may, under s. 33, either sue in the Civil Court to set aside the sale on the ground of irregularity and of substantial injury caused thereby, or sue for damages where no such irregularity can be proved.—*Ib.* *See* 1 W. R. 356. 10 W. R. F. B. 66, 13 W. R. 336.

11. A notification issued under s. 5 does not operate as an attachment by the Civil Court.—9 W. R. 481.

12. The law does not seem to provide for any interference by the Civil Court with a Collector's order under s. 11.—9 W. R. 533. *But see* 20, 27 *post*.

13. A sale of land for arrears of Income Tax under Act XXXII of 1860 does not render a mokurruree title to the land void with reference to Act XI of 1859 which has no relation whatever to such a sale.—10 W. R. 31.

14. S. 33 contemplates an action against the individual wrong-doer, irrespective of Government and coparceners.—10 W. R. 442.

15. S. 53 does not prevent a proprietor or co-sharer from purchasing his estate at a sale for arrears of revenue.—11 W. R. 265.

But his purchase is subject to all incumbrances existing at the time of sale, whether *benamee* or otherwise.—16 W. R. 136, 138.

16. A suit which is substantially one to oust a certified purchaser on the ground that part of the purchase was made on behalf of another, is barred by s. 36.—*Ib.*

17. Where a party pays into the Collectorate, under s. 9, arrears of revenue due by a defaulting proprietor, his suit to recover the amount is not inadmissible merely because there is no privity between him and defendant.—11 W. R. 377.

18. S. 9 does not allow of deposits on account of Government revenue by a defaulting proprietor himself.—12 W. R. 249.

19. Where a sale has been made when no arrears of revenue exist and the original owner sues to recover possession and obtains a decree, the decree is sufficient for the purposes of s. 34 without a special declaration that the sale is annulled; and the order for the refund of the purchase-money must be made in execution of the decree.—12 W. R. 276. *See also* 12 W. R. 311.

20. Where an application is made to a Collector by a registered proprietor for a separate account, and the application is objected to within the meaning of s. 12, or the Collector considers that an objection is regularly taken, he has no jurisdiction to dispose of the matter, but should refer the parties to the Civil Court.—13 W. R. 67. *See* 15 W. R. 112, 16 W. R. 9.

21. Where a tenure is transferred from one Collectorate to another without notice of transfer to the holder, and the holder pays his revenue at the wrong treasury, his omission to pay the revenue at the right treasury does not constitute an arrear for which his estate is liable to be sold under Act XI.—13 W. R. 336.

22. Unless there is an arrear due, action cannot be taken under s. 5, and a sale made without an arrear is absolutely void.—13 W. R. 381.

23. The word "estate" in the description attached to s. 5, means not only a whole estate, but applies also to such shares as are referred to in the first portion of the section.—13 W. R. 123.

24. In order to come under the protection of cl. 3 s. 5, it is not necessary that an estate under attachment by order of a judicial authority must also be managed by some Revenue authority, as all estates under attachment, whether managed by the Collector or not, are entitled to the benefit of the special notice described in that section.—*Ib.*

25. The receipt by a decree-holder of a portion of the surplus sale-proceeds lying in deposit in the Collector's Court, without opposition on the part of the judgment-debtor, is not such a receipt as is contemplated by s. 33.—*Ib.*

26. Want of previous notice is sufficient to warrant a Court in annulling a sale under s. 33.—15 W. R. 137.

27. There is nothing in s. 10 which enacts that, if the share of the applicant shall not be such as he states it to be, the co-sharers shall not be able to bring a suit in the Civil Court to establish the extent of their shares, in the event of the Collector, under the Butwarra law, rejecting their application for a division of their specific shares.—16 W. R. 9.

28. A sale under this Act, to realise a fine imposed for non-attendance after due notice under Reg. XIX of 1814, was declared illegal where the fine was tendered before the day fixed for sale, irrespective of the question of substantial injury.—17 W. R. 21.

29. In a sale for arrears of Government revenue, a Collector need not specify the kists in respect of which the arrears have accrued; and the fact that he did so does not hinder the Civil Court from going into the enquiry whether arrears existed in respect of those kists.—19 W. R. 283.

30. A sale under Act XI of 1859 may not be set aside on the ground of irregularity in the issue of notices, unless such irregularity is shown to have caused loss or damage to the defaulter.—*Ib.*

31. The holder of an undivided moiety of four mouzahs out of the six which constitute an estate cannot sue under s. 10; nor can he sue under s. 11 without getting his co-sharers to join him.—21 W. R. 38.

32. Where the Court of Wards, in order to save a minor's estate from sale, pays on his behalf not only his own share of the revenue due to Government, but also all that is not

SALE LAW (ACT XI OF 1859) (*continued*).

paid by the other shareholders, such payment does not constitute an admission on the part of the Court of Wards of the minor's liability for the excess revenue so paid.—21 W. R. 253.

33. Where a shareholder applies to have his interest separately recorded in the books of the Collectorate, the Collector has no authority to vary the share specified in the application.—*Ib.*

34. In a suit for declaration of title on the allegation that defendant, one of the sharers with plaintiff in a joint estate, has been recorded under s. 11 separately in respect of a larger share than that to which he is entitled.—*Held* that plaintiff, by omitting to appear before the Collector and object to defendant being registered, had not forfeited his right to the share of which he was in possession, and that the suit was one in which it was proper to make a decree.—23 W. R. 104.

See Auction-Purchaser (Revenue Sale).
Dur-ijara 2.
Enhancement 4, 47.
Jurisdiction 150, 446.
Onus Probandi 58.
Partition (Butwarra) 1, 22, 24, 25, 26.
Putnee Talook 88.
Sale 102, 145, 189.
,, Law 13.
Share 1.

Sale Law (Act VII of 1868 B. C.).

1. When the proprietor of an estate in respect of which a certificate of demand has been made under this Act, comes into Court, either before or at the time of sale, and before the property is actually sold tenders the amount of the demand, the Collector is bound to receive it, and to abstain from selling the property.—17 W. R. 21.

2. Where a sale under Act VII has been held improperly and irregularly, it can only be questioned by a suit brought within proper time and against proper parties.

Salt.

1. The absence of a protective document makes — contraband. But where the Government has made such an arrangement with a particular party as places him in possession of a large quantity of —, the element and condition which gives a — officer the jurisdiction to seize — in the absence of a protective document become wanting. —1 Hay 217.

2. As by s. 91 Reg. X of 1819, the confiscation and sale of bullocks carrying illicit — is provided for, there was nothing illegal in the authorities disposing of the bullocks in a case where the Judge only confiscated the — as contraband but passed no order for sale or confiscation of the bullocks carrying it.—Sev. 369.

3. Confiscation and release of contraband — under Act VII of 1864 (B. C.).—7 W. R., Cr., 48; 15 W. R., Cr., 21; 22 W. R., Cr., 82; 23 W. R., Cr., 6, 7.

4. A Magistrate is bound, by s. 21 Act XXV of 1861, to proceed in the investigation of offences under the — law, according to all the provisions of the Code of Criminal Procedure.—14 W. R., Cr., 36.

5. In a case of conviction under Act VII of 1864 (B. C.) of having in possession contraband —, the penalty cannot be inflicted on the owner of the — and also on his servant or gomashta who has the — in his possession, as the possession of the latter is the possession of the former.—22 W. R., Cr., 9.

6. The rules relating to the — Department in Reg. I of 1824 are not to be restricted to the four districts named, but may be enforced wherever lands might be held or required by Government for the manufacture of —.—23 W. R. 197.

7. Relation of the — Department to lands in permanent estates worked by the Department, as defined by cl. 11 s. 9 of the above Regulation.—*Ib.*

8. Rights of the Government in fuel lands to which the rules in s. 14 relate.—*Ib.*

See Amends 4.
Limitation (Act XIV of 1859) 70.
Master and Servant 2.
Summary Trial 4.

Salvage.

1. Measure of remuneration for —.—1 Hyde 208, 264.

2. A dinghee laden with gilders valued at 20,000Rs., was being propelled across the river when, a squall coming on and the dinghee being in some danger, the gilders were taken on board a flat for safety and kept there until the squall subsided. *Held* that the owners of the flat had no claim for — but were entitled to fair remuneration for service rendered.—1 Hyde 212.

3. A suit for —, even when the property had been abandoned by those in charge of it, is not cognizable by a Small Cause Court.—9 W. R. 252. *But see* 10 W. R. 79.

Sarun.

See Onus Probandi 104.

Satisfaction.

See Bond 20, 22.
Evidence (Estoppel) 42, 63.
Jurisdiction 19.
Limitation 81.
Mortgage 75, 169.
Practice (Execution of Decree) 6, 59, 230, 269.
,, (Possession) 29.
Release.
Rent 31.

School.

Government School.—*See* Jurisdiction 327.

Search-warrant.

Under what circumstances a — is issuable, and when it may be directed to other persons than Police Officers.—8 W. R., Cr., 74.

Sebait.

See Certificate 111.
Endowment 3, 10, 27, 28, 31, 37, 45, 49, 59, 61, 62, 67, 70, 78.
Enhancement 167.
Evidence (Admissions and Statements) 82.
Hindoo Law (Alienation) 18.
,, Widow 119.
Limitation 215.
Putnee Talook 41.
Registration 126.
Trust 13.

Secret Transfer.

See Benamee.
Hindoo Law (Coparcenary) 18.
Mortgage 158.
Practice (Execution of Decree) 87.

Secret Trust.

See Abatement 1.
Benamee.

Security.

1. Extension of time allowed to file — for staying execution for costs.—5 W. R., Mis., 35.

2. S. 297 Act XXV of 1861 (requiring — for good behaviour) does not apply to persons of a violent or turbulent character.—6 W. R., Cr., 6.

3. Second — for good behaviour when demandable with reference to ss. 301 and 409 Act XXV.—6 W. R., Cr., 18.

4. Where a matter in respect of which further — to keep the peace is required is the same as that before the Magistrate on the first occasion, the case can only be dealt with under s. 290 Act XXV.—7 W. R., Cr., 23, 26. *See* Recognizance 20 and 18 W. R., Cr., 57.

5. No — can be legally demanded from persons convicted of theft.—7 W. R., Cr., 57.

6. Where plaintiff leaves the country before the case is decided, defendant should apply to the Court, before such decision, to take — for costs; but if the case goes to judgment, the Court on appeal cannot call for — for costs of the Lower Court, which must be realized in execution.—8 W. R. 217.

7. No escheat of — without notice under s. 220 Act XXV of 1861.—9 W. R., Cr., 4; 15 W. R. Cr., 82.

8. Notice to show cause why — should not be demanded must be served before a Magistrate can pass orders requiring — to keep the peace.—9 W. R., Cr., 16.

So also under s. 492 Act X of 1872.—20 W. R., Cr., 57; 22 W. R., Cr., 68.

9. A decree for possession with mesne profits cannot be pledged as — for a personal debt.—10 W. R. 152.

10. It is not necessary to call witnesses in support of an information laid before a Magistrate previous to requiring — for keeping the peace.—11 W. R., Cr., 6.

11. A deed of divorce is a "valuable —" within the meaning of s. 30 Penal Code.—11 W. R., Cr., 15.

12. The — to be furnished by plaintiff, when an inhabitant of foreign territory, under s. 31 Act VIII, is equally necessary when defendant also is a resident of foreign territory.—12 W. R. 465.

13. The adjudication of notorious bad livelihood under s. 296 Act XXV of 1861 should be made on evidence taken in an independent proceeding and not on evidence taken in a previous trial.—13 W. R., Cr., 21.

14. A respondent, who is admittedly the legal heir of the deceased proprietor, should not be required to give — at the instance of the appellants who are mere strangers.—16 W. R. 311.

15. A party who seeks to obtain — after a decree has been executed, must show special circumstances, *e.g.* waste or improper dealing with the property.—17 W. R. 521.

16. Security for costs from appellant may be demanded, at the discretion of the Court, at any time before the hearing of the appeal; the words "before the appellant is called upon to appear and answer" in s. 342 Act VIII meaning not the date mentioned in the notice, but that on which the appeal is called on to be heard.—18 W. R. 102.

17. A Magistrate cannot increase the amount of — and demand sureties in a summons to show cause, which provided only for a recognizance of much smaller amount and made no mention of sureties at all.—18 W. R., Cr., 61.

18. Although the form of a — bond given in Form F of the Appendix to Act XXV of 1861, combines two bonds, one for the principal, and one on the part of sureties, the provision of s. 300 will be complied with if those two bonds are upon two pieces of paper instead of one.—19 W. R., Cr., 29.

19. Where a judgment-debtor asks for stay of execution-proceedings pending appeal, and his request is granted on condition of his giving —, he is entitled to have a reasonable opportunity for showing that the sum demanded as — is considerably more than the amount awarded by the decree.—20 W. R. 52.

20. Where parties are summoned to show cause why they should not be bound down to keep the peace, the proceedings should be conducted with due regard to ss. 491 and 492 Act X of 1872, and the summons should distinctly specify the amount and nature of the — required, and the time for which the — is to run.—20 W. R., Cr., 36; 25 W. R., Cr., 50.

21. To justify an order under s. 491, there must be a reasonable probability, and not merely a bare possibility, of a breach of the peace being committed.—20 W. R., Cr., 57, 68.

22. What was held to be the effect of a — bond which was given by a decree-holder pending appeal, and by which he undertook, if the decision of the first Court were revised or modified by the Appellate Court, to make good any property taken by him in execution.—21 W. R. 82.

23. An order to give — to keep the peace must be passed by the Magistrate alone after he has adjudicated upon evidence before him, and cannot be made by a Bench of Magistrates.—21 W. R., Cr., 12.

24. The course prescribed by s. 491 *et seq.* Act X of 1872 is to be adopted in cases in which a breach of the peace may be apprehended on grounds independent of any previous proceedings; the Magistrate being bound to hear such evidence as the parties may have to offer, and to pronounce judicially upon the same before requiring bonds or —.—22 W. R., Cr., 9. *See also* 24 W. R., Cr., 30, 52.

25. In making an order for — to keep the peace under s. 505 Act X of 1872, a Magistrate has no right to impose an arbitrary condition not essential to restrain a party from the infringement of the law, *e.g.* a condition requiring the accused to furnish two sureties being persons of respectability and substance not related to him and residing within one mile of his house.—22 W. R., Cr., 37.

26. According to s. 493 Act X of 1872, the means of the party who is required to give —, and not of his master, should be looked to.—22 W. R., Cr., 74.

27. Where a — bond under s. 509 Act X of 1872 was signed by a person under and in assumed pursuance of an order which directed that he should sign a bond under s. 493, the bond was held not to constitute a binding obligation.—23 W. R., Cr., 1.

28. The taking of — for keeping the peace is a matter within the discretion of the Magistrate provided that he has materials upon which to proceed.—23 W. R., Cr., 58.

29. A Sessions Judge has no jurisdiction, under s. 504 Act X of 1872 or any of the preceding sections, to decide as to the necessity for taking — for good behaviour, or without enquiry to pass orders as to the — to be furnished or as to the time it is to remain in force. The jurisdiction as to the necessity is in the Magistrate, and, after sending the accused to the Magistrate under s. 504, the Sessions Judge is *functus officio*.—24 W. R., Cr., 10.

30. No right of appeal lies from the order of a Sessions Court fixing a period of detention under s. 508 Act X of 1872 for an accused party refusing to furnish —.—24 W. R., Cr., 12.

31. Ss. 504 to 506 Act X of 1872 contemplate that, when a conviction of an offence is contemporaneous with an order for taking — for good behaviour, the sentence for the substantive offence is to be first carried out, and the person to be bound then brought up for the purpose of being bound.—24 W. R., Cr., 13.

See Appeal 141, 142, 203.
Certificate 52, 83.
Champerty 16.
Contractor 4.
Contribution 81.
Criminal Breach of Trust 2.
Evidence 78.
Factors 1.
False Evidence 14.
High Court 47, 70*a*, 78, 98, 99, 100, 142, 165.
Hindoo Widow 38, 97.
Insolvency 13.
Interest 102.
Jurisdiction 345, 366.
Lien 4, 6.
Limitation 219.
Maintenance 42.
Mortgage 117, 269.
Pauper Suit or Appeal 5, 6.
Practice (Execution of Decree) 14, 17, 24, 45, 57, 65, 117, 202, 223.
Principal and Surety 5, 7, 10, 22, 28, 86.

SECURITY (*continued*).

See Privy Council 12, 20, 25, 26, 27, 31, 33, 34, 35, 37, 39, 42, 44, 51, 52, 58 62, 65, 66, 70, 71, 72.
Putnee Talook 101.
Recognizance.
Sale 174.
,, Law 17.
Small Cause Court 43.

Securities (Government).

1. Plaintiff sued for value of a Government Promissory Note and interest by way of damages, on the allegation that 26 years ago his father had sent defendant's father the note to draw the interest upon it, but that defendant's father, after remitting the interest, had wrongfully retained and never returned the note; and that plaintiff's cause of action accrued 7 years ago when he attained his majority: Plaintiff neither alleged nor offered any proof of the period during which he was incapacitated from suing. *Held* that the suit should have been commenced within 12 years from the time of the wrongful detention by defendant's father; that the suit cannot be regarded as a suit against a trustee, but a suit to recover damages for the wrongful act of defendant's father; neither was it a suit to recover property deposited within the meaning of cl. 4 s. 3 Reg. II of 1805.—Sev. 962.

2. Where — bearing 5 per cent. interest were deposited in Court for payment of interest thereon to certain annuitants, and the Registrar of the Court, in pursuance of notices given by the Government Agent, converted the notes into 4 per cent. papers, though the conversion of the notes was the act of the Government and of the Court, the depositor was held liable, under his agreement, to pay the annuitants the sum originally agreed upon.—(P. C.) 2 W. R., P. C., 48 (P. C. R. 553).

3. A Government Promissory Note is not a corrody and consequently not immoveable.—5 W. R. 141.

4. The holder of a Government Promissory Note cannot arbitrarily insist on its being renewed, but is entitled to a renewal when the back of the note is so covered with indorsements that there is not room to write an indorsement distinctly.—(O. J.) 22 W. R. 106.

5. Where the legal holder of a Government Promissory Note transfers the note, the Government is bound to act in accordance with such transfer, unless it has notice of an order of Court restraining the holder from parting with the note.—(O. J.) *Ib.*

6. An *allonge* defined. -(O. J.) *Ib.*

See Certificate 30.
Court Fees 15.
Endowment 75.
Interest 42, 43.
Land taken for Public Purposes 5.
Limitation 245.
Onus Probandi 5, 34.
Practice (Attachment) 16.
Principal and Surety 28.

Seduction.

1. Enticing or taking away with a criminal intent a wife living in her husband's house, or in a house hired by him for her occupation and at his expense during his temporary absence, is punishable under s. 498 Penal Code, provided the seducer knew, or had reason to know, that she was the wife of the man from whose house he took her.—5 W. R., Cr., 50.

2. In a charge under s. 498 Penal Code (of taking away a married woman), marriage must be presumed from the fact of a man and woman living together, and from their own evidence (altogether unrebutted) that she is his legally married wife.—17 W. R., Cr., 5.

3. A finding exactly in the words of s. 498, though not actually illegal when it is doubtful which of the several offences therein mentioned has been committed, is a finding which ought not to be resorted to if it can be avoided and it can be determined under which part of the section the prisoner is guilty.—22 W. R., Cr., 72.

Self-acquired Property.

1. The doctrine of Hindoo law that a father takes a share in his son's —, applies only to cases of families in joint estate, but not where separation in estate has taken place. —W. R. Sp. 352 (L. R. 128).

2. When one of two brothers (who were once joint) and his heirs have been in exclusive possession and enjoyment of a purchased property for a long time, the presumption is that the purchase was made by that brother, and that the other had no right, title, or interest in it.—3 W. R. 153.

3. Degree of proof required to prove an allegation made, by members of a joint Hindoo family (managers of the family property) that separate acquisitions have been made by them.—3 W. R. 165, 5 W. R. 82.

4. The Court declined to extend to all the remote branches of a Hindoo family, separate in mess and estate and having no common interests like those of brothers, the doctrine laid down in a solitary case in which an elder brother, who *recovered* certain property by his own money and labor, was awarded two-thirds and the younger brother obtained only one-third.—8 W. R. 13.

Recovery (according to Hindoo Law) explained.— 9 W. R. 69.

5. Where other property is proved to have been separately acquired by the members of a joint Hindoo family, there is, in respect of any particular property, no more presumption of joint than of separate acquisition.—9 W. R. 558.

6. Under the Mitacshara (? Mithila), a father can dispose of his —, moveable and immoveable, at his own pleasure, and he can, by will, make an unequal distribution of the same amongst his heirs.—10 W. R. 287, (*affirmed by P. C.*) 20 W. R. 137.

7. Explanation of the principles that, according to the law current in Bengal, govern a father's rights in the — of a son.—11 W. R. 73.

8. According to the Dayabhaga a shop and business acquired by an elder brother from his father-in-law, being in fact given to him "on account of marriage" to his daughter, was held to be — in which his younger brother was entitled to no share.—25 W. R. 307.

See Hindoo Law (Alienation) 14, 22.
,, ,, (Coparcenary) 14, 23, 27, 56, 66, 87, 91.
,, ,, (Inheritance and Succession) 48, 76, 103.
,, ,, (Migration) 5.
,, ,, (Sale) 2, 3, 5, 6.
,, Widow 11, 82.
Onus Probandi 45, 47, 182, 209, 210.
Sale 234.
Separate Property.

Self-Defence.

See Right of Self-Defence.

Separate Property.

See Co-sharers 41.
Hindoo Law (Coparcenary) 25, 29, 62, 66.
,, ,, (Inheritance and Succession) 83, 95, 103, 116.
Husband and Wife 6, 7, 34, 35.
Maintenance 81.
Self-acquired Property.
Separation.
Special Appeal 109.
Streedhun 9.

Separation.

1. Deeds of sale and mortgage and mutations of names in the Collector's Register are evidence of — in a Hindoo family.—W. R. F. B. 18 (1 Hay 119).

2. According to Hindoo law, a separate dealing is no proof of a — of partners.—2 Hay 353. *But see* Sev. 193.

3. The evidence of any respectable witness is sufficient to prove the *status* of two Hindoo brothers who are alleged to have lived separate.—Sev. 117.

4. The mere fact of one of several co-sharers alienating his share of the joint property is no proof of — in estate.—5 W. R. 214.

5. Where, with small aid from paternal property, separate and distinct properties are acquired principally through the exertions of particular members of a joint Hindoo family, such members are entitled to a double share upon —.—6 W. R. 219.

6. Mere — in mess is not sufficient to rebut the presumption of joint property arising out of a nucleus of joint property.—8 W. R. 270.

7. An admitted — in dwelling and food would give rise in Hindoo law to a presumption of — in estate.—10 W. R. 148.

See Certificate 42, 66, 84.
Compromise 11.
Hindoo Law (Coparcenary) 12, 14, 25, 26, 61, 68, 69.
,, ,, (Inheritance and Succession) 61, 77.
Maintenance 29.
Onus Probandi 21, 42, 49, 65, 79, 132.
Partition.
Payment 2.
Practice (Suit) 36.
Relinquishment 23.
Representative 8.
Self-acquired Property 1, 2, 3.
Separate Property.

Se-putnee.

See Appeal 105.
Intervenor 2.
Putnee Talook 48.

Sequestration.

See Jagheers 1.

Servant.

See Master and Servant.

Service.

1. — upon an attorney's clerk of an order directed to be served upon the attorney is not good —.—2 Hyde 116.

2. The Nazir's return is not legal evidence of the — of process.—4 W. R., Mis., 4; 6 W. R. (Act X) 92; 10 W. R. 3; 12 W. R. 365. *See also* Sale 54. *But see* 15 W. R. 203, 19 W. R. 102.

Nor a Collectorate peon's return.—15 W. R. 270.

3. A special bailiff cannot be sent to serve ordinary process in a foreign territory.—10 W. R. 349.

4. The evidence of the serving-peon that he endeavoured to serve the summons on the defendants, and that, not being able to serve them personally, he affixed a copy on the outer door of their dwelling-house, is legal evidence of the fact of —.—17 W. R. 362.

5. Mookhtars and kurpurdauzes carrying on what is called zemindaree business are not servants or agents within the meaning of s. 11 Act XI of 1865 upon whom substituted — of summons may be made.—19 W. R. 341.

6. In cases of substituted — it is not sufficient to show that the notice has been attached to the door, unless the condition which renders such a mode of — good, viz. that the person who ought to be served is keeping out of the way, has been first established to the satisfaction of the Court.—(P. C.) 19 W. R. 353. *See also* 22 W. R. 482 21 W. R. 381.

See Enhancement 214, 284, 286.
Ex-parte Judgment or Decree 22, 32, 34, 36.
Onus Probandi 254, 275.
Practice (Appeal) 92.
,, (Execution of Decree) 26, 28, 75, 209.
,, (Review) 78.
,, (Suit) 35.
Putnee Talook 59, 100, 113.
Sale 59, 176, 196.
Summons 2, 3, 4, 8, 10, 12, 13, 18, 19.
Tullubana.
Witness 64, 87.

Service Tenure.

1. The mere fact of long possession of a — on no rent at all, gives the holder no exemption from the payment of rent when the service is no longer required or performed.—W. R. Sp. (Act X) 37 (2 R. J. P. J. 198).

2. Ordinarily, if land is given on a quit-rent or no rent in consideration of service to be performed, the tenure would lapse when the service ceased.—W. R. Sp. 324.

3. *Quære.* Where no service has been required for a long series of years, whether the grantor has not waived his right to resume.—*Ib.*

4. *Quære.* Also, where the land is given at a quit-rent on condition of a particular service, whether the grantor can end the contract by saying he has no further need of the service while the grantee is willing to render the service.—*Ib.*

5. Where it is the custom for a — to revert to the grantor on the death of the grantee without heirs, the grantor has a right to the land on such death occurring. -6 W. R. 87.

6. A grant to a man and his heirs on condition of performing service does not in general mean that the service is to be personally performed by the grantee or his heirs, but that the grantee is to be responsible for its performance.—9 W. R. 126.

7. A suit will not lie against a jagheerdar holding a — on account of arrears of rent unpaid by his predecessor.—10 W. R. 255.

8. An alienation of a — without the acquiescence of the grantor deprives the grantee of all right to it.—10 W. R. 289.

9. Where a sunnud granted to the holder of a jagheer was only a confirmation by the Government and the Rajah of the tenure under which the jagheer was held, and authorized the jagheerdar to remain in possession and in performance of the services with his brothers without describing the kind of service,—*Held* that the Rajah could not resume the tenure without proof that the services to be performed by the jagheerdar were personal services only to the Rajah.—(P. C.) 18 W. R. 321.

10. Where in a suit for ejectment the Court decides that defendant may offer money payment in lieu of service, evidence need not be taken as to the rate of rent to which the service ought to be commuted.—18 W. R. 340.

11. Where the original donee of a — ceases to do any service and pays in lieu a rent which his descendants continue to pay, the condition of the tenure becomes altered from service to rent.—(P. C.) 19 W. R. 211.

12. Where a tenant had an hereditary interest in property paying a small quit-rent for it and holding it subject only to the duty to the zemindar of furnishing a few men to aid the regular Police,—*Held* that the interest was a beneficial one, and that it was for the zemindar to show that it could not be attached and sold for the tenant's debts.—24 W. R. 309.

13. A — can be sold in execution of a decree for arrears of rent, provided the service due from the holder be of a private kind and personal to the plaintiff, but not where the service is of a public kind, as in the case of a Police *jagheer*.—25 W. R. 206.

See Bhoomear Tenure.
Chakeran Land.

SERVICE TENURE (*continued*).

See Co-sharers 16, 58.
Ghatwals.
Kubooleut 59.
Maafee-birt.

Set-off.

1. A sum uncertain cannot be pleaded as a — in an action for money due on bonds.—1 Hay 128.

But defendant is bound, under s. 121 Act VIII. to tender a written statement containing particulars of —.—14 W. R. 473.

2. A claim to — may be entertained by the Revenue Courts if falling within the scope of Act X of 1859.—3 B. L. R. P. C. 93. 18 W. R. 339. *See also* 23 W. R. 20. [*But see* 15 W. R. 545. 16 W. R. 303.

3. A claim for rent cannot be pleaded as a — in a suit for money paid by plaintiff on account of revenue, to protect a lease in the nature of a mortgage to him.—1 W. R. 296.

4. In a suit for house-rent the tenant cannot be allowed to — a sum expended by him in repairing the house without authority from the plaintiff.—6 W. R., C. R., 26.

5. In a suit by a carrier for the carriage of goods the defendant cannot under s. 121 Act VIII — the amount of damages claimed against plaintiff for injury to the goods, but must sue to recover the damage in a separate suit.—10 W. R. 295.

6. In a suit for rent, the defendant, claiming credit for a deposit under s. 4 Act VI of 1862 (B. C.), is entitled to a —.—10 W. R. 492.

7. An award of private arbitration *per se* cannot be — against a decree of Court.—11 W. R. 111.

8. Where two parties have to recover sums from each other under the same decree, the party entitled to the lesser sum cannot take out execution against the other, and the Court should direct a —.—13 W. R. 106.

9. A defendant cannot, under a plea of —, set up a claim for which a suit has been previously brought by him and been dismissed.—15 W. R. 252.

10. A liquidated sum due on a bond may, even without an agreement to that effect, be — against sums due for rent.—16 W. R. 224.

11. A — cannot be allowed for costs not actually awarded, as where a decree of the High Court gave the successful appellant costs of that Court and of the Lower Appellate Court but omitted to award the costs of the first Court.—16 W. R. 308.

12. A decree which is incapable of being enforced cannot be — against a decree which is alive.—*Ib.*

13. A — of one unascertained sum against another may be a mode of compromise, but cannot be made the basis of a decree between hostile litigants.—(P. C.) 17 W. R. 113.

14. It is not equitable to allow a —, against a claim relating to a particular account, of a matter of another nature altogether.—17 W. R. 177.

15. In a suit for money due upon an account stated, the Judge ought not to go into the question of —, but should confine himself to giving plaintiff a decree for the amount found due upon the account stated.—*Ib.*

16. A putneedar who has purchased a share in the zemindaree to which his *putnee* appertains, has a right to — his *putnee* liability for rent against his zemindaree right.—20 W. R. 409.

17. Where a defendant claims a right of — arising out of one and the same transaction as that in which the suit originated, it is not equitable to drive him to a cross-suit; a decree under s. 195 Act VIII and the latter portion of s. 121 being of the same effect and subject to the same rules as if it had been made in a separate suit.—20 W. R. 410.

18. An indefinite claim for damages in the nature of unascertained mesne profits cannot be pleaded as a — against a specific claim for rent of later years. Such damages must be sued for separately.—22 W. R. 1.

19. In a suit for rent, a defendant has no right to — against the plaintiff's claim money in deposit with the plaintiff, unless such money was due and payable to the defendant at the time the suit was brought.—*Ib.*

20. The claim which a defendant may, under s. 121 Act VIII, — against a plaintiff's money claim must itself be of the nature of a debt, but not a claim based upon principles of equity, *e.g.* a claim to contribution.—22 W. R. 15.

21. To admit of a —, there must be, by the nature of the two claims, such a connection between the claim and counter-claim that the truth and completeness of the one cannot be judged of or measured without reference to, and a consideration of, the other.—*Ib.*

22. S. 195 Act VIII only applies where defendant has been allowed to — a demand against plaintiff's claim, but not where, in ascertaining defendant's liability for mesne profits, deductions on account of cultivation or collection expenses are allowed from the rent proved to have been received.—25 W. R. 275.

See Abatement 21.
Assignment 6, 7, 8, 11.
Bond 11.
Contribution 4, 33.
Cross Decrees.
Hindoo Widow 45.
Interest 21, 72.
Jurisdiction 343.
Kubooleut 42.
Malikhana 3.
Mesne Profits 49.
Practice (Execution of Decree) 197, 230, 237, 258.
Principal and Agent 5, 33.
Remission 1.
Small Cause Court 3.

Settlement.

1. A — made with the plaintiff by the Revenue authorities can create in him no express title to lands admittedly held by the defendants for a very long period, or summarily to eject such persons, and his proper remedy is to sue for the rent of these lands.—2 Hay 253.

2. In a suit to set aside a —, two accountants were employed at plaintiff's instance, and not by order of Court, to examine the settlor's books and give evidence. *Held* that the investigation being most needful to the Court and adapted to the ends of justice, the Taxing Master was right in allowing their expenses.—2 Hyde 89.

3. The receipt by a lessee of malikhana from a Collector during his temporary lease will not bar the right to a permanent — of any party who, under the law of alluvion, is entitled to —.—W. R. Sp. 149. *See also* 18 W. R. 198.

4. Shikmee talookdars under lakherajdars, whose lands have been resumed by Government, cannot sue for a —; they can only claim to have their shikmee rights upheld.—W. R. Sp. 262 (L. R. 40).

5. A decision in 1857 (against defendant's lakheraj title in 1846 of which he then stated he was dispossessed by plaintiff in 1833) is not conclusive to entitle plaintiff (zemindar) to succeed in a suit for the — obtained by defendant in 1851, unless the latter suit be brought within legal time from the date of the first decision.—1 W. R. 165.

6. A — between a decree-holder and a judgment-debtor holds good notwithstanding failure of latter to fulfil one of its terms, viz. the registration of the decree-holder's name.—1 W. R., Mis., 25.

7. A revised — made with A for himself and as trustee for B, does not destroy B's previous rights in the property. Nor does the subsequent purchase by A of the zemindaree right from the Government destroy the rights of the old proprietors, the purchase being not of the *corpus* of the property but of the right to receive the Government revenue assessed thereon.—2 W. R. 6.

8. Proceedings of Settlement Officers.—*See* Evidence (Documentary) 30, 51, 56.

9. A — *dol* does not include the reserved rights of the State, *e.g.* the right to the julkur of navigable rivers, which, according to cl. 2 s. 4 Reg. XI of 1825, never passes to private individuals with whom Government made a —.—5 W. R. 175.

10. In the — of a talook after resumption, it cannot be presumed that all the parties settled with had equal rights

SETTLEMENT (*continued*).

simply because the — was made with all of them jointly.—7 W. R. 366.

11. The absence of allusion to a religious or charitable trust in a fresh — of lands resumed by Government proves, not that there was no such trust, but that it has not been proved by those claiming the land as lakheraj.—8 W. R. 316.

12. The mere fact of obtaining a — from the — officers cannot give a right which has been lost by limitation.—10 W. R. 249.

13. When land is resumed by Government as invalid lakheraj under Reg. II of 1819, there is no provision of law which compels Government, under a decree of the Civil Court, to make a — with the ex-lakherajdar, if for some reason of its own it declines to do so.—10 W. R. 296. (*Over-ruled by F. B.*) *See* 22 *post*.

14. When a temporary — expires, the proprietor may claim as of right from the Government a permanent — of the land, unless by his own conduct he has forfeited the right.—10 W. R. 395.

15. A julkur — does not necessarily include the land on which the water rests; and it is for the party holding that julkur — to prove that he is entitled not only to the right of fishing, but also to any land which the drying up of the river may lay bare.—11 W. R. 272. *See also* 24 W. R. 200.

16. Long possession itself does not give a title to — if the parties asking for the — do not comply with the requirements of the law.—11 W. R. 378.

17. A — of reserved lakheraj land "subject to the orders of the Board of Revenue" may be set aside by that Board.—12 W. R. 6.

18. Under the Board's rules a Commissioner has authority to set aside such a — and is limited to no time in the exercise of his powers of revision.—*Ib.*

19. A — with Government and possession under it do not necessarily constitute proprietary right, much less can they divest and destroy trusts to which the settlor was subject.—(P. C.) 17 W. R. 41.

20. A suit for a declaration of plaintiff's right to a share in the — of an accretion will lie without the Government being made a party to it.—17 W. R. 145.

21. A — of a talook, although temporary, made with a person professing to be a proprietor, confers a proprietary right, and not a limited interest; and a party admitted to a share in the — with a *maliki* allowance becomes a co-sharer in the proprietary interest.—18 W. R. 271.

22. An ex-lakherajdar is entitled to an adjudication by the Civil Court of his right to a — of lands resumed by the Government under Reg. II of 1819, the Government being made a party to the suit.—(F. B.) 21 W. R. 327. *See also* 22 W. R. 52.

23. Voluntary —.—*See* Conveyance 13.

24. Marriage —.—*See* Husband and Wife 6, 34, 35.

25. Where a zemindar made a fresh — with B C alone, the heir of B B deceased, one of several members of a Hindoo family holding joint possession of a *jote*, and B C's rights and interests were sold in execution of a decree, and the purchasers claimed the whole of the *jote*,—*Held* that the zemindar could only settle with B C the rights and interests of B B, which alone were sold to the auction-purchasers.—22 W. R. 382.

26. In s. 37 Act XI of 1859 the word — refers, not to the Permanent —, but to the — which took place after the resumption by Government of the lands previously held as lakheraj.—24 W. R. 476.

27. Tenants are not concluded by a mistake in — papers, nor does Reg. XXV of 1802 (Madras Code) provide for forfeiture of rights by parties who by carelessness or accident allow their land to be misdescribed in — proceedings.—(P. C.) 25 W. R. 3.

See Advancement 1.
Ancestral Property 15, 18.
Boundary 8.
Churs 15, 59.
Co-sharers 31.
Court of Wards 9.
Ejectment 48.
Enhancement 82, 85, 274.
See Ghatwals 24.
Hindoo Law (Coparcenary) 76.
Husband and Wife 6.
Jurisdiction 151, 474.
Lease 51.
Limitation 138.
" (Act XIII of 1848) 9, 20.
" (Act XIV of 1859) 208, 218.
Nowabad 2.
Onus Probandi 65, 202.
Permanent Settlement.
Practice (Possession) 22.
Release.
Rent 106.
Right of Property 3.
Right to sue 11.
Shikmee 4, 7.
Title 4, 16.
Under Tenures 3.
Zemindar 3.

Sezawal.

See Jurisdiction 168.
Lease 9, 55.
Practice (Attachment) 3.
Putnee Talook 93, 101.
Rent 55, 59.
Sale 108.

Share.

See Attached Property 21, 35.
Auction-Purchaser (Revenue Sale) 13.
Certificate 60*a*.
Co-sharers.
Declaratory Decree 30.
Dower 4.
Hindoo Law (Adoption) 46.
" " (Coparcenary) 10, 35, 37, 40, 47, 49, 58.
" " (Religious Ceremonies) 2.
Joint Stock Company 1, 3, 4, 5.
Jurisdiction 58.
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Limitation (Act XIV of 1859) 84, 307.
" (Reg. III of 1793 s. 14) 1.
Mortgage 68.
Onus Probandi 48, 211, 270.
Partition (Butwarra).
Practice (Execution of Decree) 135, 203, 230, 250, 263.
Putnee Talook 97.
Rent 87.
Right to sue 8.
Sale 145, 205*a*.
" Law (Act XI of 1859) 1, 4, 6, 7, 23.
Stamp Duty 17, 32, 70.

Sheeya.

See Endowment 55, 76.
Guardian 10, 32.
Mahomedan Law 1, 2, 34, 36.

Sheriff.

1. The law of the Mofussil is the *lex rei sitæ* at Sheriff's sales, and controls or modifies the English law as to execution and delivery.—W. R. Sp. 179.

2. A life-interest in the residue of the real and personal property of a testator after all the charges upon it have been satisfied and provided for, and after a full administration has taken place of the assets for the purpose of discharging these several dispositions, cannot be sold under an execution issued in the Supreme Court against the property of the testator.—(P. C.) 4 W. R., P. C., 87 (P. C. R. 259).

3. Powers and liabilities of — as to relaxation of imprisonment and escape of judgment-debtors.—(P. C.) 4 W. R., P. C., 99 (P. C. R. 274).

4. Purchasers at Sheriff's sales when not bound to take notice of a suit against the execution-debtor.—1 W. R. 103. *See* 16 W. R., P. C., 19.

5. Where a — sells property under a *fieri facias*, and on its being found that he had no authority to execute the suit at the place where the property was situate, the purchaser (after the conveyance has been actually executed) is evicted by the execution-debtor by a title to which the covenants in his purchase do not extend, he cannot recover the purchase-money from the execution-creditor either at law or in equity.—(O. J.) 21 W. R. 372.

See Fieri Facias.
Legacy 2.
Mortgage 172.

Sheristadar.

1. The carrying on of a shop by a — is not such an irregularity as will justify his dismissal from his appointment.—2 Hay 674.

2. Where a person was nominated by the Sudder Ameen as — and the Zillah Judge refused to confirm his appointment upon no ground at all, the High Court directed the Judge to confirm the appointment.—6 W. R., Mis., 128.

3. Where a Moonsiff regularly appointed as — a person not otherwise disqualified, the Judge was held not competent to remove him merely because he was of opinion that the claims of others were superior.—7 W. R. 131.

See Auction-Purchaser (Revenue Sale) 17.
Evidence (Documentary) 48.
,, (Estoppel) 46.
High Court 138.

Shikmee.

1. A — talookdar may sue, under cl. 6 s. 23 Act X of 1859, to recover possession.—W. R. Sp. (Act X) 133 (3 R. J. P. J. 121).

2. A — talookdar cannot sue, under Act X of 1859, for confirmation of title and possession.—2 W. R. (Act X) 40.

3. A — talookdar is not entitled to recover money voluntarily paid by him to preserve an estate from sale.—6 W. R. 173.

4. The possession of — lakherajdars cannot be disturbed by an auction-purchaser under Act XI of 1859 so long as they pay the revenue assessed upon them under the settlement made with the principal proprietor under Reg. VII of 1822 after resumption of their lakheraj tenure.—14 W. R. 1. *See* 15 W. R. 141.

5. Under s. 16 Act VIII of 1865 (B. C.) an auction-purchaser of a — tenure acquires it free of all incumbrances.—19 W. R. 169.

6. Where defendants set up a — right, plaintiff is not entitled to eject defendants unless plaintiff can show *khas* possession within 12 years previous to suit.—22 W. R. 351.

7. Where a — talookdar accepted from Government a pottah which admitted him to be a person having a right to a settlement, and gave him, as a separate and distinct allowance under the head of *expenses* (in addition to the usual allowance for collections etc.) the allowance which had, under the previous settlement, been made to him under the head of *malikhana*,—*Held* that, if he had notice, and accepted the payment because he knew that his right as *malik* of the — talook was no longer recognized, then the — talookdaree right comes to an end at that time.—24 W. R. 247.

See Enhancement 227.
Evidence (Documentary) 20.
Jurisdiction 190, 205, 232, 241.
Onus Probandi 65.
Partition (Butwarra) 17.
Resumption 27.
Sale Law (Act XI of 1859) 4.
Settlement 4.
Survey 33.
Under-Tenures 3.

Shipping.

1. A tug, though not sufficiently powerful to perform the service, undertook to tow a ship from the Sandheads to Calcutta. The captain of the ship, though informed by the pilot that the tug was too weak for the task, allowed her to make the trial, but was ultimately obliged to throw her off. *Held* that nothing could be recovered upon the original agreement, but that the tug was entitled to a *quantum meruit* for work and labor done.—1 Hyde 260.

2. A party having two tugs A and B, undertook to supply tugs to two vessels P and Q in the order of their engagement as soon as the tugs were free. A was first free and towed P, which had the prior claim, to Diamond Harbour where she became disabled. B subsequently towed Q, and finding A disabled at Diamond Harbour, left Q and towed P out to sea, returning subsequently for Q. *Held* that B was not justified in leaving Q, and that she ought to have towed her out to sea without interruption.—1 Hyde 293.

3. Where a — order authorized the receipt "of 300 bales of cotton not exceeding 52 cubic feet measurement at the screw house," the fair meaning was taken to be that the measurement by which the parties were to be bound was a measurement at the screw house, and that, if the agent of the defendants passed the bales there, the defendants could not afterwards enquire into the size of the bales.—(O. J.) 17 W. R. 515.

See Arrest 1.
Bill of Lading.
Bottomry Bond.
Carrier 1, 2, 3, 6.
Damages 36.
Freight.
Guarantee 1.
Jurisdiction 69, 7.
Lien 3.
Negligence 2.
Pilots.

Shoosung Estate.

Succession to the — how regulated.—2 W. R. 80, (*affirmed by P. C.*) 19 W. R. 8.

See Family Custom 5, 6.
Jurisdiction 191.
Possession 13.
Right of Property 4.

Shops.

See Assessment 2.
Middlemen 3.

Sister

See Evidence (Estoppel) 57.
Half-sister.

Sister (*continued*).

See Hindoo Law (Inheritance and Succession) 12, 18, 39, 47, 55, 110.
Mahomedan Law 15.
Mortgage 30.
Sister's Daughter.
Sister's Son.

Sister's Daughter.

See Hindoo Law (Inheritance and Succession) 55.

Sister's Son.

See Certificate 96.
Hindoo Law (Adoption) 53.
,, ,, (Inheritance and Succession) 10, 15, 24, 26, 41, 43, 49, 50, 68, 72, 106.
Mahomedan Law 8.
Mother's Sister's Son.
Nephew.

Slander.

See Abuse.
Damages 21.
Defamation.
Libel.

Slaughter-house.

See Municipal 4, 13, 18, 19.

Slave.

The Sessions Judge was held bound to try the accused upon his commitment on a charge. under s. 369 Penal Code, of having detained a woman against her will as a —.—16 W. R., Cr., 73.

Small Cause Court.

1. A — has jurisdiction to try questions of title which incidentally arise in suits cognizable by them.—(F. B.) W. R. F. B. 127 (S. C. C. 51, L. R. 30, Sev. 114*a*). *See also* 9 W. R. 336, 13 W. R. 105, 17 W. R. 88, 18 W. R. 104.

2. The mere fact of a zemindar's omlah residing in a cutcherry belonging to the zemindar within the jurisdiction of a — does not make the zemindar a constructive dweller within the jurisdiction of that Court.—S. C. C. 18.

3. Jurisdiction of — in case of plea of set-off.—S. C. C. 20.

4. Jurisdiction of — in suit brought by a co-sharer for his share of the profits of joint property.—S. C. C. 22. *See* 18 W. R. 104.

5. Jurisdiction of — in suits involving partnership accounts.—*See* Jurisdiction 14, 392.

6. The Calcutta — under Acts IX of 1850 and XXVI of 1864 has no jurisdiction over suits of smaller value than 500Rs. on the ground only of the cause of action having arisen within the limits of Calcutta.—2 Hyde 258.

Nor where plaintiff makes a fictitious claim for damages to increase the amount of the suit for the purpose of giving the Court jurisdiction.—19 W. R. 20.

7. A clerk of a — is not authorized to sign the copy of the judgment and certificate alluded to in s. 20 Act XI of 1865.—3 W. R., S. C. C., 7 (S. C. C. 136).

8. S. 4 Act XXIII of 1861 is applicable to a —, and the High Court may under that section authorize the — to try a case against two or more defendants one of whom dwells within, and the others not within, the limits of its jurisdiction.—3 W. R., S. C. C., 25; 18 W. R. 312.

9. A suit for rent or rather hire of land used and caused to be used by defendant for passing and repassing to and from his steamer is cognizable by a —. If there was no express hiring, defendant is liable to damages for trespassing on plaintiff's land; but if he agreed to pay for the use of a way across the land, that would not be rent.—5 W. R., S. C. C., 18.

10. Amenability of European soldiers and their native wives to — in actions of debt.—5 W. R., S. C. C., 21. *See* 14 W. R. 231.

11. Where a person sued for Rs.17-8 as rent of a fishery and the like sum as penalty for non-payment thereof, it was held that the suit was in fact for a penalty equal to double the amount due and was cognizable by a —, and that plaintiff could not recover more than the damages actually sustained.—6 W. R., C. R., 5.

12. A suit for money for which plaintiff agreed to let defendant tap certain date-trees and appropriate the produce for a single season, is not a suit for rent, but for the breach of a contract in respect of which a — has jurisdiction.—6 W. R., C. R., 8.

13. A suit will not lie in the — upon a deed by which defendant conveyed to plaintiff (in lieu of dower) a half-share in all his property.—6 W. R., C. R., 12.

14. A suit by a co-sharer for contribution in respect of Government revenue paid on behalf of another co-sharer to save the whole estate from sale, is not cognizable by a — under s. 6 Act XI of 1865.—6 W. R., C. R., 15; 7 W. R. 17, 32. (*Affirmed by P. C.*) *see* 17 *post*.

15. Where an ijara lease constituted a mortgage of the rents as a security for the amount due on a bond, with a stipulation that the balance after paying the jumma payable by the mortgagor should be applied by the mortgagee in payment of the bond,—*Held* that the — had jurisdiction to try what amount was due on the bond and also the question of payment by means of the rents assigned.—6 W. R., C. R., 16. *See* 16 W. R. 228.

16. A Judge of a — cannot interfere in a case which was determined by a former Judge contingent upon a question referred for the opinion of the High Court, after such opinion has been expressed.—7 W. R. 352.

17. A joint sharer in a revenue-paying estate, who has paid the revenue due upon the whole estate, cannot sue his co-sharer for contribution in a Small Cause Court where there is no contract for repayment.—(F. B.) 7 W. R. 377. *See* 15 W. R. 86.

Upon the same principle a — has no jurisdiction to entertain a suit to recover money paid by A in liquidation of a debt due by B where the case is not one of damage or of breach of contract.—25 W. R. 73.

18. A suit for contribution will not lie in a — in the absence of an implied joint contract, or if not founded on any contract.—(F. B.) 7 W. R. 381, 386. *See* 20 W. R. 235.

19. The "decision or order" mentioned in s. 27 Act XXIII of 1861 means something that would conclusively bind the parties if made in a —.—4 W. R. 60.

20. A Mofussil — has no jurisdiction to entertain a suit against Government.—8 W. R. 88. *See* 10 W. R. 352.

21. The words "a share or part of share in an intestacy" in the 2nd proviso to s. 6 Act XI of 1865, explained.—11 W. R. 93. *See also* 17 W. R. 46, 520.

22. Where a judgment of a Mofussil — is called in question by one of the parties on a point of law, a new trial must be applied for within the period allowed by s. 21 Act XI of 1865.—11 W. R. 525.

23. An application for a new trial is a point in the proceedings previous to hearing and a — can ask the opinion of the High Court on a question of law upon such an application.—*Ib.*

24. In applying for a new trial under s. 21 Act XI of 1865, notice of intention is an essential step; and in calculating the period within which such notice is to be given, the date of the decision should be excluded.—12 W. R. 17, 18 W. R. 454. *See* 15 W. R. 281.

25. A third application for a new trial in a — is not admissible under the same section.—12 W. R. 266.

26. Plaintiff and defendant having been co-sharers in a decree in which the respective shares of the decree-holders were definitely fixed, defendant amicably received from the judgment-debtor his own share and plaintiff's share on her behalf. *Held* that, if defendant acted as agent of the plaintiff, there was a true contract implied between them

SMALL CAUSE COURT (*continued*).

that defendant would recover what was due to plaintiff, and pay it over or account for it to her, and that plaintiff's suit to recover the same from defendant was one coming within the jurisdiction of the —.—13 W. R. 100.

27. *Quære*. Whether it was necessary for the Subordinate Judge, sitting in appeal, to raise the above question in the present case, inasmuch as he also held the office of Judge of —.—*Ib.*

28. Where the same person holds the office of Judge in two Small Cause Courts, and sits for half a month in one Court and for the remaining half in the other, the "next sitting" of either Court after the close of its half-monthly term would, according to s. 21 Act XI of 1865, be on the first day on which the Judge sat again in that Court.—13 W. R. 103. *See also* 14 W. R. 42.

29. Notice of application for a new trial, required by s. 21 Act XI of 1865 to be given within 7 days from the date of decision, is in time when the seventh day and the following days are authorized holidays and notice is given on the first open day after such holidays.—13 W. R. 105.

30. A party applying under s. 21 Act XI of 1865 for a new trial, must deposit in Court, with his notice of application, the amount for which a decree has been passed against him; and where the notice has been given without such deposit, a subsequent deposit, if made within 7 days, will not entitle the party to ask for a new trial.—14 W. R. 42.

31. There is nothing in Act XXI of 1863 to justify the conclusion that the — at Rangoon is not properly constituted.—14 W. R. 331.

32. Where defendant takes a technical objection to the form of plaintiff's cause of action, a Judge of the — at Calcutta ought, under s. 27 Act IX of 1850, to rectify the mistake in plaintiff's claim, whether plaintiff requests it or not.—14 W. R. 487.

33. A suit to recover money alleged to have been paid in excess of plaintiff's share of rent on account of his co-tenant, was held to be a suit for contribution, and as such not cognizable by the —.—15 W. R. 52.

34. A party obtaining a rule *nisi* for a new trial on particular materials, cannot go into fresh evidence when the rule comes on for hearing; though the Court may make further enquiry if necessary.—15 W. R. 161.

35. When new trials are moved for on allegation of facts, the facts should be stated and the answer supported by affidavit.—*Ib.*

36. When a — was held bound to hear a second application for a new trial under s. 21 Act XI of 1865.—15 W. R. 402.

37. An application to a — on 25th May to set aside an *ex-parte* decree of 14th March, when no process had been executed, was held to fall within the first of the two provisions in s. 21 Act XI of 1865.—16 W. R. 226.

38. A — may, on the ground of fraud and false personation, grant a new trial under s. 21 where judgment has been passed on confession.—17 W. R. 48.

39. A suit for the *mojul* or exigible portion of dower due under a *kabinnamah*, is cognizable by a — under s. 5 Act XI of 1865, notwithstanding collateral questions as to the validity of the marriage; but the decision of the — on such collateral matters has not the same effect as that of a Civil Court in a regular suit.—17 W. R. 512.

40. A suit for *mowujjul* or deferred dower, payable to the wife by the husband upon her divorce, or upon the husband's death by his heirs out of his estate, is cognizable by a —.—18 W. R. 301.

41. S. 21 Act XI of 1865 does not require a plaintiff applying for a new trial to deposit the costs of the defendants.—18 W. R. 446.

42. Under s. 53 Act IX of 1850, the — of Calcutta may grant a second new trial in the same case.—19 W. R. 203.

43. Where a party to the suit requests the reservation of a question by the (Calcutta) — for the opinion of the High Court, and it is not reserved because the — entertained any doubts, if he does not appear in the High Court, the decision must be given against him whether security has been given or not for the costs of the reference and the amount of the judgment.—20 W. R. 349.

44. S. 32 Act IX of 1850 applies, in the case of intestacy, to a suit against the administrator, and, in the case of a legacy, to a suit against the executor or other person liable to pay the legacy.—(O. J.) 22 W. R. 71.

45. Where the claim was not for part of a distributive share under an intestacy or a legacy under a will, but the liability of the defendant arose out of a loan made to him by a widow of the deceased.—*Held* that this was a case in which the defendant had a right to have joined in the suit against him all the persons who claimed to be entitled to receive the debt due, after the debt of the widow, to the heirs of her deceased husband.—(O. J.) *Ib.*

46. Where a —, after granting a new trial, referred the matter to arbitration, and the arbitrators failed to make any award,—*Held* that it was necessary that a fresh judgment should be given by the Judge.—24 W. R. 469.

See Appeal 59, 91.
Arbitration 50.
Certificate 1.
Contract 26, 41.
Contractor 3.
Co-sharers 18, 34.
Court Fees 3.
Damages 19, 49, 51, 75, 77, 97, 98, 104.
Evidence (Estoppel) 86, 125.
„ (Oral) 44.
Ex-parte Judgment or Decree 26.
Forgery 8.
Fresh Suit 2.
High Court 9, 30, 31, 43, 52, 57, 77, 79, 95, 102, 106, 127, 139, 169.
Insolvency 12.
Interest 9.
Jurisdiction 13, 14, 16, 17, 18, 68, 122, 154, 156, 181, 182, 183, 184, 203, 206, 207, 234, 235, 237, 257, 260, 273, 277, 278, 279, 280, 281, 286, 294, 295, 296, 298, 300, 301, 303, 305, 306, 309, 320, 321, 325, 326, 327, 330, 342, 343, 352, 360, 362, 375, 377, 380, 381, 392, 395, 398, 419, 421, 430, 434, 439, 445, 448, 456, 463, 464, 472, 473, 494, 501, 503, 506, 507, 508, 511.
Mandamus 1.
Minor 28.
Mookhtar 11.
Moveable Property 1, 3, 4.
Municipal 11.
Plaint 6, 7, 11, 34, 39.
Pleader 1, 17, 22.
Practice (Attachment) 44.
„ (Commissions) 15.
„ (Execution of Decree) 1, 36, 46, 93, 103, 107, 177, 188, 196.
„ (Review) 27, 75.
Registration 97.
Res Judicata 2.
Right of Appeal 7.
Rules of Practice 33.
Sale 169.
Salvage 3.
Service 5.
Special Appeal 27, 33, 44, 45, 47, 53, 55, 59, 60, 66, 67, 68, 82, 89, 98, 101, 103, 107, 110, 121, 130, 139, 148, 164.
Stamp Duty 51.
Timber 3.
Vakalutnamah 3.
Value of Suit or Appeal 17.

Smoke.

See Right to Light and Air 5.

Smuggling.

See Stolen Property 10.

Society.

1. A suit to be admitted into the — of the defendants will not lie.—2 Hay 83.
2. Nor a suit to enforce a contract to remain for ever in the — of the defendants.—10 W. R. 349.
3. Nor a suit for a decree declaring plaintiff's rights to restoration to the — of which defendants and he were members.—11 W. R. 457. *See* 6 W. R. 325.

See Caste.
Jurisdiction 286, 496.
Maintenance 37.
Public Policy 4.

Son.

1. According to Hindoo law, a — who has not inherited his father's estate is not liable for the father's debts.—W. R. Sp., Mis., 1.
2. Bought —.—*See* Hindoo Law (Inheritance and Succession) 30.
3. Unborn —.—*See* Hindoo Law (Inheritance and Succession) 27, 29; Right to sue 1.
4. Posthumous —.—*See* Mahomedan Law 13.
5. Only —.—*See* Hindoo Law (Adoption) 11, 49.
6. Natural —.—*See* Maintenance 21.
7. Adult —.—*See* Maintenance 22.
8. Dwyamushayana.—*See* Hindoo Law (Adoption) 49.

See Ancestral Property 8, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21.
Benamee 17, 17*a*, 18, 19, 36.
Certificate 105.
Daughter's Son.
Endowment 59.
Evidence (Presumptions) 15.
Father's Brother's Daughter's Son.
Fraud 3, 4, 8.
Gift 26, 33, 44, 57.
Grandson.
Heir 3.
Hindoo Law (Adoption).
„ „ (Alienation) 4, 5, 6, 10, 11, 12, 13, 16, 21, 22.
„ „ (Coparcenary) 16, 88.
„ „ (Inheritance and Succession) 19, 20, 21, 22, 26, 44, 49, 74, 75, 76, 93.
„ „ (Sale) 1, 4, 8, 10, 13, 15, 16.
„ Widow 46, 47, 53, 83, 84.
Limitation 110.
„ (Act XIV of 1859) 162.
Mahomedan Law 4, 35.
Marriage 23.
Misjoinder 2.
Mortgage 52.
Onus Probandi 139, 164.
Partition 10*a*, 24*b*, 30*a*.
Practice (Execution of Decree) 6*a*, 53, 101, 260.
Relinquishment 18, 19.
Sale 284.
Self-acquired Property 1, 7.
Son's Daughter.
„ Wife.
Streedhun 4, 5.
Trust 7, 8.
Uncle's Daughter's Son.
„ Son.
Will 44, 51.

Son-in-Law.

See Hindoo Law (Coparcenary) 50.

Son's Daughter.

See Hindoo Law (Inheritance and Succession) 1.

Son's Wife.

See Hindoo Law (Inheritance and Succession) 19, 95, 96.
„ Widow 15, 48, 57.
Maintenance 4, 16.

Sonthal Pergunnahs.

See Appeal 190.

Soodra.

See Hindoo Law (Adoption) 9, 11, 60, 70.
„ „ (Inheritance and Succession) 8, 82.
Marriage 26.

Soondeerbunds.

See Limitation 23.
Resumption 5.
Waste Land 3.

Soonee.

See Endowment 55.
Guardian 32.
Mahomedan Law 1, 2, 36.

Special Appeal.

1. A — lies from an order rejecting an application for revival of a suit under s. 2 Act LIII of 1860.—W. R. F. B. 11 (1 Hay 90, Marshall 38).
2. No — lies from exercise of discretion by Judge in ordering or not ordering local enquiry in a suit to contest notice of enhancement.—W. R. F. B. 19 (1 Hay 229, Marshall 610).
3. A — will not lie upon a question of jurisdiction depending upon a fact not determined by the Lower Court or admitted by both parties.—W. R. F. B. 31 (1 Hay 242; Marshall 107).

So where the question was raised whether a District Judge could hear an appeal from a decision affecting property alleged to be worth more than 5000Rs., the question whether the property was worth more or less was held to be a question of fact which could not for the first time be raised on —.—25 W. R. 260.

4. Where a case had been decided *ex-parte* by the Deputy Collector for default of defendant's appearance, and the Judge on defendant's appeal dismissed it on the merits, it was held that, though an appeal did not lie to the Judge under s. 58 Act X of 1859, yet having admitted the appeal in the absence of any statement that the case was decided *ex-parte*, he was right in dismissing the appeal with costs, and that no — lay from his decision on the ground that he should have dismissed the appeal without going into the merits.—W. R. F. B. 46 (1 Hay 345, Marshall 145).
5. Right of respondent in — to urge objections under s. 348 Act VIII of 1859.—W. R. F. B. 48 (1 Hay 350, Marshall 151).
6. — will lie if the decree and judgment taken together show that the decision is erroneous.—(F. B.) W. R. F. B. 81 (2 Hay 276, Marshall 301).
7. Under s. 11 Act XXIII of 1861, a — will lie from a decision passed in appeal from an order relating to the execution of a decree.—(F. B.) W. R. F. B. 83 (2 Hay 293, Marshall 296) (*over-ruling* the decision in 1 Hay 251).
8. The High Court has the power to extend the time

SPECIAL APPEAL (*continued*).

for the presentation of an application for the admission of a —.—(F. B.) W. R. F. B. 146.

9. Power of High Court on — to disallow items improperly deducted from value of gross produce of land.—W. R. F. B. 148 (2 R. J. P. J. 179).

10. The taking by the Lower Appellate Court as a fact of that which is not a fact, is such an error in the investigation in procedure affecting the merits as, under s. 372 Act VIII of 1859, would be a good ground for — and a remand.—1 Hay 28 (Marshall 6). *See also* 21 W. R. 52, 217.

11. A plaintiff, who did not raise the question of the validity of his mokurruree pottah in appeal before the Zillah Judge, was not allowed to do so in —.—1 Hay 94. *See also* 6 W. R. 157.

12. A plaintiff was held to have no ground of — in respect of the omission of all notice in the judgment of the Lower Appellate Court of his claim to deduction from limitation of the time occupied by former suits brought by him for the same matter in which he had been nonsuited, whether this point had been passed on the Lower Appellate Court or not.—1 Hay 123.

13. In a suit for possession of half-anna of a certain property, the defendant was not allowed on the hearing of the — to take an objection not mentioned in his memorandum of appeal, viz. that the Judge below ought to have tried whether the plaintiff's vendor had as much as half-anna to sell in the property.—1 Hay 371.

14. — will not lie from the refusal of an Appellate Court to allow additional evidence to be filed before it.—2 Hay 286 (Marshall 278). *See also* 6 W. R. 196, 7 W. R. 489, 15 W. R. 429.

15. The High Court can only interfere in — where the Lower Court finds on no evidence or on what is not legal evidence, but not upon a question of credibility or weight of evidence.—2 Hay 421 (Marshall 322). *See also* 6 W. R. 292; 9 W. R. 338; 10 W. R. 365; 11 W. R. 278; 17 W. R. 314; 18 W. R. 105; 20 W. R. 259, 474; 21 W. R. 257; 22 W. R. 9, 170; 23 W. R. 250; 24 W. R. 13, 61, 119, 431; 25 W. R. 137.

16. It is an error in investigation producing an error in the decision, and therefore a ground of —, that the Lower Appellate Court admitted all the receipts without any evidence in support of more than three of them.—2 Hay 419 (Marshall 381).

18. A statement was prefixed to the issues settled in the Court below, to the effect that "the vakeels of the parties accept the following issues." *Held* that it was not competent, after such consent, to object on — that a material issue was omitted.—Marshall 519. *See* 9 W. R. 503.

19. No — lies, under s. 363 Act VIII of 1859, from an order passed in regular appeal remanding a case to the Court of first instance for further investigation as to the facts.—2 Hay 591 (Marshall 469). *But see* 21 *post*.

20. The Court of Appeal directed a remand to try the issue on a plea of payment. The Lower Court determined the whole case over again. *Held* that it had no power to do more than try the issue referred, and that on this ground its decision might be set aside on —.—Marshall 603.

21. — will lie from a decree of the Lower Appellate Court reversing the decision of the first Court and remanding the case to be tried on the merits. Such a decree is not an order passed before decree within the meaning of s. 363 Act VIII of 1859.—1 R. J. P. J. 54 (Sev. 36), 6 W. R. 61. *But see* 19 *ante*.

22. The sufficiency and credibility of the evidence upon which a decision rests is not a ground for —, nor likewise the objection that the Judge has recorded no grounds for accepting fresh evidence in appeal.—2 R. J. P. J. 14. *See also* 8 W. R. 356, 12 W. R. 244.

23. The High Court cannot in — interfere with an order of a Zillah Judge transferring the defendants for trial to the Sessions Judge for forgery.—Sev. 206.

24. A — and not a new suit should be brought to contest a legal point involved in an adverse decree.—W. R. Sp. 55.

25. In a suit by a lessee upon a contract for a refund of excess revenue, a — is not admissible if the amount claimed be under 500Rs.—W. R. Sp. 297.

26. No — lies from the order of a Judge passed under s. 347 Act VIII refusing to re-admit an appeal dismissed for default by a Principal Sudder Ameen. The application for re-admission should be made to the Principal Sudder Ameen.—W. R. Sp. 315 (L. R. 93). *See also* 74 *post*. *See contra* 2 W. R. 254, (Mis.) 23; 5 W. R., Mis., 27; 7 W. R. 81; *also* 8 W. R. 861.

27. No — lies in a suit for damages for breach of a private arrangement by which the parties agree to control the terms of a decree, where the amount is within the jurisdiction of a Small Cause Court.—W. R. Sp. 346 (L. R. 122).

28. The omission to record an opinion on one of many items of evidence (*e.g.* an Ameen's report) is not such an error as would warrant a —.—W. R. Sp. 367. *But see* 22 W. R. 519.

29. Parties who did not appeal from the decision of the first Court cannot appeal specially against the decision of the Lower Appellate Court on the ground that the decision of the first Court prejudiced their rights.—W. R. Sp. (Act X) 97 (3 R. J. P. J. 31).

30. The High Court refused to show indulgence to a special appellant whose time for appealing had expired by his not exercising due diligence, and intimated that the vacations were not to be added to the prescribed periods for appealing.—W. R. Sp., Mis., 13.

31. A — will lie from an order rejecting a respondent's application for the re-trial of an appeal heard in his absence.—W. R. Sp., Mis., 37.

32. By Act III of 1843 the decision of a single Judge of the Sudder Court of Bombay as to the admissibility of a — was final; but the Act did not take away the right of appeal to the Privy Council.—(P. C.) 4 W. R., P. C., 94 (P. C. R. 268).

33. No — lies under s. 27 Act XXIII of 1861 in a suit for damages below 500Rs. for detention of materials of a house, and for declaration of plaintiff's title to the house, the suit being of a nature cognizable by a Small Cause Court, and the claim for declaration of title being in law mere surplusage.—1 W. R. 35. *See also* 2 W. R. 136, 10 W. R. 272.

34. Misjoinder of claims, without proof of substantial injury sustained thereby, is no ground for —.—1 W. R. 114. *See also* 20 W. R. 240, 25 W. R. 69.

Nor misjoinder of parties.—12 W. R. 504, 19 W. R. 300. *See also* 124 *post*.

Nor non-joinder of parties.—22 W. R. 288.

Nor want of specific order for substitution of parties.—24 W. R. 2.

35. The objection (that an adoption was invalid because the party adopted was the eldest son of his natural father) was rejected in — because not urged in the Lower Courts and not specifically taken in the petition of —.—1 W. R. 136.

36. A petition of — which does not state the real point adjudicated is inadmissible under s. 374 Act VIII, and no oral plea can be added.—1 W. R. 247.

37. No — lies from an order of a Judge rejecting a claim of one auction-purchaser against another.—1 W. R., Mis., 31.

38. — will not lie merely because the Lower Appellate Court remanded a case under s. 351 Act VIII, instead of calling for additional evidence under s. 355, without proof that the special appellant has been prejudiced.—2 W. R. 181, 13 W. R. 76. *See also* 13 W. R. 234, 20 W. R. 188. *But see* 6 W. R. 47.

39. Where a dwelling-house alleged to belong to defendant is found by the Lower Appellate Court to be within its jurisdiction, the fact cannot be contested in —.—2 W. R. 255.

40. Pleas to be relied upon by a special appellant must be distinctly taken in the memorandum of appeal.—2 W. R. (Act X) 42. *See also* 25 W. R. 7.

41. No — lies under s. 257 Act VIII from an order in appeal confirming a sale in execution of decree.—2 W. R., Mis., 30, 41; 6 W. R., Mis., 119; (F. B.) 9 W. R. 218. *See also* W. R. Sp., Mis., 89; 14 W. R. 385.

42. An advocate or pleader cannot be heard in support of a — in which no certified grounds have been filed.—3 W. R. 216.

43. Where a lessor sues to recover leased premises on the ground of breach of condition (*viz.* sale of tenure), and lessee allows judgment to go by default, the purchaser defending as intervenor, neither lessee nor purchaser has a right of —.—3 W. R. (Act X) 164.

44. S. 27 Act XXIII of 1861 is prospective and does not bar a — from a decision passed before that Act in cases of a Small Cause Court nature.—3 W. R., Mis., 19. *See* 14 W. R. F. B. 30.

SPECIAL APPEAL (*continued*).

45. The right reserved to parties in pending suits under s. 387 Act VIII, does not refer to s. 7 Reg. VII of 1822, which bars a — in such cases.—*Ib.* *See* 14 W. R. F. B. 30.

46. A — from an order passed under ss. 5 and 6 Act XXIII of 1861 will lie as from an order passed under s. 347 Act VIII.—3 W. R., Mis., 23; 7 W. R. 338. *But see* 6 W. R., Mis., 130; 10 W. R. 160; and 74 *post.*

47. In a suit brought in a Small Cause Court for an amount under 500Rs., if the issues raised affect the question of title, a — is not barred *quoad* those issues by s. 27 Act XXIII of 1861.—4 W. R. 60. *But see* 10 W. R. 79, 18 W. R. 104.

48. Lower Appellate Court's omission to give its reasons for believing a witness disbelieved by first Court, is no ground for —.—4 W. R. 106, 24 W. R. 296. *But see* (*as to converse case*) 14 W. R. 58.

49. A defendant cannot appeal specially against a decision passed on the appeal of his co-defendant, affirming the decision of the first Court, against which he has not himself appealed.—5 W. R. 106.

50. S. 374 Act VIII leaves it in the discretion of the Court to admit any new ground of appeal arising out of the proceedings, though it may have been omitted in the petition of —.—5 W. R. 147.

51. The omission of the Lower Appellate Court to set forth its reasons for confirming the decision of the first Court, and the insufficiency of additional reasons where such are given, are no grounds for —.—5 W. R. 178.

52. The error of the Lower Appellate Court in supposing an admission to have been made is not a ground for — but for a review of judgment.—5 W. R. 196. *But see* 20 W. R. 480.

53. No — will lie under s. 27 Act XXIII of 1861 in a suit for damages for inadequate sale of a decree.—5 W. R. 215.

54. Meaning of "*good* grounds of appeal" in the Rule dated 10th May 1866.—5 W. R., Mis., 54. *See also* 15 W. R. 8.

55. No — will lie under s. 27 Act XXIII of 1861 in a suit for damages below 500Rs. (*e.g.* for destruction or misappropriation of crops).—6 W. R. 7, 7 W. R. 73.

Irrespective of whether the damages are on account of moveable or immoveable property.—11 W. R. 369.

56. Power of High Court in —, before remanding a case, to look into the facts, and if they warrant a conclusion contrary to the decision of the Judge below, to pronounce judgment.—6 W. R. 262.

57. Refusal of a plaintiff's application to withdraw his suit is no ground for —.—6 W. R. (Act X) 24.

58. Under s. 11 Act XXIII of 1861, a — will lie from the order of a Lower Appellate Court rejecting an appeal in an execution case as presented out of time.—6 W. R., Mis., 106.

59. The admissibility of a — under s. 27 Act XXIII of 1861 is a matter for decision not by an officer of the High Court, but judicially by the Court itself.—6 W. R., Mis., 128.

60. S. 27 Act XXIII of 1861 does not bar a — where the Lower Court has wrongly decided that the suit will not lie in any Civil Court.—7 W. R. 41.

Or where the suit is improperly brought in a Civil Court which has no jurisdiction to entertain it, instead of a Small Cause Court which has jurisdiction.—24 W. R. 478.

61. A — will not lie from the order of a Judge declaring that sufficient cause has not been shown to his satisfaction for presenting after time an appeal from an *ex-parte* judgment of a Deputy Collector.—7 W. R. 296.

62. A — will not lie from the order of a Lower Appellate Court directing a local investigation by an Ameen.—7 W. R. 425. *See also* 22 W. R. 183.

Or from its finding as a fact that the Ameen's report is untrustworthy and his map wrong.—24 W. R. 342.

63. The refusal of a Moonsiff to inflict a fine upon witnesses who fail to appear after service of summons is no ground for —.—7 W. R. 460.

64. In — the appellant should be confined to the issues fixed in the Courts below.—8 W. R. 5. *See also* 9 W. R. 493, 503; 12 W. R. 33; 19 W. R. 93; 21 W. R. 132; 22 W. R. 352, 552; (P. C.) 23 W. R. 208; 24 W. R. 480; 25 W. R. 59, 178, 448.

65. A — will lie from an order rejecting an application to set aside an *ex-parte* decree passed under Act X of 1859.—8 W. R. 87.

66. Under s. 27 Act XXIII of 1861 no — lies from a regular appeal decided since the passing of Act VIII in suits of a Small Cause Court nature instituted before the passing of Act XXIII of 1861, anything in s. 387 Act VIII notwithstanding.—8 W. R. 107, 321; 14 W. R. F. B. 30.

Affirmed by F. B. ruling that a — does not lie from the decision of a Lower Court in regular appeal in a suit of a Small Cause Court nature.—(F. B.) 20 W. R. 421.

67. A suit to establish a surety's liability on account of arrears of rent due from a putneedar, where the non-payment of rent by the putneedar would have to be established, is not cognizable by a Small Cause Court, and consequently a — will lie under s. 27 Act XXIII of 1861.—8 W. R. 111.

68. S. 27 Act XXIII of 1861 bars a — in execution proceedings arising out of decisions passed on regular appeal in suits of a Small Cause Court nature.—8 W. R. 112, 321; 12 W. R. 86; 18 W. R. 252. *See* 14 W. R. F. B. 30.

69. Where a *hibbanama* and a will are relied on in defence, and only the former is contested below, plaintiff cannot have the issue as to the will tried in —.—8 W. R. 356.

70. The omission of a Judge to take into consideration all the allegations and proofs bearing upon a question of fact, as well as the material presumptions arising therefrom, is a defect in law; but before such defect can constitute a ground for —, it must be shown to have caused an error in the decision on the merits.—8 W. R. 395. *But see* 9 W. R. 338, 11 W. R. 482, 14 W. R. 289.

71. Misconstruction of a document or evidence is a ground for —.—9 W. R. 366, 18 W. R. 447, 19 W. R. 222, 20 W. R. 259, 22 W. R. 519. *See* 11 W. R. 435. *But see* 10 W. R. 424, 23 W. R. 250, 406.

72. A party wishing to urge new grounds in support of a — should apply under s. 374 Act VIII for permission to do so at the hearing of the —; he cannot be permitted to raise them afterwards in an application for review.—9 W. R. 370.

72*a*. Objections which are entirely matters of fact, or which, though essentially matters of law, go to the substance of plaintiff's claim, cannot be admitted for the first time in —.—9 W. R. 493. *But see* 19 W. R. 22.

73. Where an issue is raised in the Lower Courts which could be the foundation for a declaration of right, the non-decision of a claim to such a declaration is no ground of —.—9 W. R. 503.

74.—No — lies from an order rejecting an application for the re-admission of an appeal under s. 347 Act VIII.—(F. B.) 10 W. R. F. B. 39. *See* 10 W. R. 160.

75. An error of valuation which does not affect the jurisdiction of the Courts in which a suit is tried, and does not lead to a defect in the decision on the merits, is no ground of —.— 10 W. R. 32.

76. Where a plea (under s. 4 Act X or otherwise) is set aside by the evidence of papers not objected to in the Lower Courts, they cannot be objected to in —.—10 W. R. 50, 91.

77. A suit by co-sharers to recover collections, under a contract is a suit in which a — may be barred under s. 27 Act XXIII of 1861.—10 W. R. 79.

78. Objections to the admissibility or relevancy of the evidence, when first raised in —, must be accepted.—10 W. R. 121. *But see* 12 W. R. 33, 315; 24 W. R. 296.

79. *Quære*, As to costs of — successfully maintained upon such an objection.—*Ib.*

80. Where both parties to a suit adduce calculations made in neighbouring villages as evidence to establish their respective cases, they impliedly consent that the calculations, though not strictly legal, shall constitute the materials for the Court to act upon, and cannot afterwards object to them in —.—10 W. R. 139. *See also* 11 W. R. 277.

81. It is competent for the High Court sitting in — to look into the grounds which a Judge has given for admitting an appeal after the lapse of the period limited for that purpose.—10 W. R. 178.

82. S. 27 Act XXIII of 1861 bars a — in suits cognizable by a Small Cause Court, even where the suit has been referred to arbitration.—10 W. R. 205.

Also in suits upon private arbitration awards cognizable by a Small Cause Court under s. 327 Act VIII.—13 W. R. 233.

83. With reference to ss. 346, 347, and 372 Act VIII, a — lies from an *ex-parte* decision passed by an Appellate Court in regular appeal.—10 W. R. 450, 20 W. R. 462.

SPECIAL APPEAL (*continued*).

84. A special appellant cannot be permitted entirely to change in — the allegations on which he went to trial.—11 W. R. 10, 133, 169.

85. A Court of — has indirectly the same powers as are vested in a Court of regular appeal by ss. 351, 354, and 355 Act VIII, in respect to a wrong order passed by a Lower Appellate Court.—11 W. R. 228. *But see* 24 W. R. 21.

But the fact of the Lower Appellate Court taking additional evidence under s. 355 will not make the — liable to be heard and determined as if it were a regular appeal.—23 W. R. 51.

86. Where a suit has been contested in both the Lower Courts, it is too late for the defendant to urge in — that the plaint discloses no cause of action.—11 W. R. 248, 350. *See also* 17 W. R. 400. *But see* 14 W. R. 420.

87. The finding that the notices in certain execution proceedings were not made *bonâ fide* is a finding of fact, and cannot be disturbed in —.—11 W. R. 263.

88. A plea of merger cannot be raised for the first time in —.—11 W. R. 485.

89. A suit to recover plaintiff's share of *málikhana* is a suit for damages cognizable by a Small Cause Court for an amount below 500Rs. The fact of a question of right having been incidentally raised in the case, did not prevent s. 27 Act XXIII of 1861 from barring a —.—12 W. R. 29.

90. Where decisions of Lower Courts were not interfered in — on mere technical grounds.—12 W. R. 210.

As that an alleged gift was a verbal will, and not legal under Act XXI of 1870.—23 W. R. 230.

91. No — lies under s. 27 Act XXIII of 1861 in a suit for damages upon a breach of contract for a sum below 500Rs.—12 W. R. 269.

92. The first Court being satisfied that plaintiff's case could not be established, refused to examine defendant's witnesses. The Lower Appellate Court, differing from the first Court, gave plaintiff a decree. *Held* that, although the first Court had committed a great irregularity, still as that point was not raised in the Lower Appellate Court, it could not be taken in —.—12 W. R. 363.

93. A — will not lie in a suit founded upon defamation in which the damages claimed are 500Rs. and therefore within the jurisdiction of a Small Cause Court.—12 W. R. 372. *See also* 15 W. R. 179.

94. It is in the discretion of a Court of first instance, after the plaintiff's case is closed, to allow him to call further witnesses. No — lies in such a point.—12 W. R. 455.

95. Where an objection taken in the written grounds of appeal was not passed at the hearing before the Lower Appellate Court, it cannot be raised in —.—12 W. R. 170.

96. No — lies from the order of a Judge refusing an application to restore an appeal that had been withdrawn.—13 W. R. 167.

97. Where an *ex-parte* decree for an arrear of rent has been passed by a Revenue Court, and the parties come up in — on the ground of equity, the High Court can interfere without prejudice to the jurisdiction of the Revenue Courts.—14 W. R. 158.

97*a*. The objection to jurisdiction on the ground of valuation was allowed to be taken for the first time in —.—14 W. R. 228. *But see* 22 W. R. 9, 101, 124.

98. Where a plea of under-valuation of the suit was not passed in the first Court by the defendant's pleader, it was not allowed to be raised in — although previously urged in the Lower Appellate Court.—11 W. R. 423.

99. In an action for malicious prosecution, where the Lower Appellate Court finds no reasonable ground for the charge, the finding is one of fact and cannot be interfered with in —.—14 W. R. 425.

100. Where a Judge instead of giving full effect to the terms of a sale certificate, limits the effect of it by certain inferences and conclusions drawn from other documents, he commits an error of law which may be remedied in —.—14 W. R. 435.

101. Where the original suit was for money on a bond, the fact of its having been decided on a *solehnamah* (which was embodied in the decree) by which the creditor obtained land in lieu of money, does not change the nature of the suit with reference to s. 27 Act XXIII of 1861 or make it open to —.—15 W. R. 65.

102. The objection as to non-service of notice of enhancement was allowed to be taken for the first time in —.—15 W. R. 71.

103. Where money borrowed by a servant on account of his master is not repaid by the master, and a decree being taken out against the servant, he sues the master to recover the money, the action is one for debt within the meaning of s. 6 Act XI of 1865 and no — lies.—15 W. R. 86.

104. A plaintiff who failed to mention the first Court's refusal to examine his witnesses in his grounds of appeal to the Lower Appellate Court, was not allowed to urge it in —.—15 W. R. 87.

105. In — the general affirmation of a judgment can only refer to the points raised by the special appellant, the rejection of the appeal not necessarily affirming all the other findings of fact or law incidentally come to by the Lower Appellate Court.—15 W. R. 91.

106. Points of law must be taken notice of in — though not raised on a former occasion when the case was remanded.—15 W. R. 180.

107. A — is not barred in the case of a claim for money due under a bond for less than 500Rs., where the property pledged under the bond is liable.—15 W. R. 265.

108. The question of competency of an agent to sue, if not raised in the initial stage of a suit, cannot be permitted to be raised in —.—15 W. R. 392.

109. Where the Courts below find adversely to the title of a Hindoo widow suing jointly with her sons to hold the land in dispute as separate property, her sons are not competent without her to prefer a —.—15 W. R. 536.

110. Where a question of title arises in a suit of a nature triable by a Small Cause Court, which must be determined before plaintiff can get a decree, and the Lower Appellate Court fails to determine it, a — will lie.—15 W. R. 556.

111. The High Court should be very careful in — not to interfere with inferences of fact drawn by a Lower Appellate Court.—16 W. R. 311, 20 W. R. 267. *But see* 24 W. R. 171.

112. A finding of fact may be disturbed in — if the reasonings and the views upon which it is based are erroneous in law.—17 W. R. 161. *See* 25 W. R. 550.

113. A — does not lie from the order of a Judge dismissing an appeal before him for default of prosecution.—17 W. R. 180.

114. The High Court ought not, under s. 374 Act VIII, to allow a point of law to be argued in — when it was not distinctly raised in the first Court nor alluded to in the Lower Appellate Court.—17 W. R. 211.

115. Erroneous rejection of evidence by reason of misconception of position of plaintiff's lessor was held to be an error in law.—17 W. R. 255. *See also* 23 W. R. 166, 25 W. R. 137, 550.

So also complete disregard of important evidence.—23 W. R. 65, 24 W. R. 300.

So also where judgment was not based upon the whole evidence.—23 W. R. 160.

i.e. where it ignored two out of three witnesses.—25 W. R. 140.

So also misconception of evidence was considered a sufficient reason for a remand.—21 W. R. 134, 152; 22 W. R. 278; 24 W. R. 192, 293, 343.

But not a mistake in admitting or rejecting documentary evidence unless it has really affected the decision on the merits.—21 W. R. 392.

116. The not writing of a decision by a Judge in his own language does not affect the validity of the decision and is no ground of —.—17 W. R. 352.

117. A — cannot be entertained by one defendant against another.—17 W. R. 373.

118. The remanding a case under s. 352 Act VIII (when the first Court had not disposed of it upon any preliminary point), instead of disposing of it under s. 354, is not an irregularity which affects the merits of the case or the jurisdiction of the Court, so as to justify interference in —.—17 W. R. 465.

119. A — was held to lie under s. 102 Act VIII of 1869 (B. C.) in a suit for rent below 100Rs. in which the question of right to enhance had been determined.—17 W. R. 495.

120. A — will not lie under the above section in a suit for rent below 100Rs. which is decided solely on want of proof of relationship of landlord and tenant, without any decision as a right, title, or interest in land.—18 W. R. 42,

Special Appeal (*continued*).

261; 20 W. R. 15 (*two cases*); 24 W. R. 213; 25 W. R. 114, 247.

121. When a suit is of a nature cognizable by a Small Cause Court, there is no right of — although a question of title is incidentally raised, as the finding of the Small Cause Court is not conclusive but only for the purpose of determining the suit brought in that Court.—18 W. R. 104.

122. The mere putting what is perhaps a greater burden of proof on one party than on the other, is no ground for reversing a decree in —, where the decision on the merits has not been affected.—18 W. R. 106.

123. Where the Lower Appellate Court has weighed the evidence on both sides, the giving of one bad reason for believing plaintiff's witnesses is not a ground of —.—18 W. R. 110.

124. A plaintiff cannot object for the first time in — to an intervenor having been made a party under s. 73 Act VIII.—18 W. R. 112, 24 W. R. 286.

125. Nor is the objection that the depositions of the witnesses were not taken in the manner prescribed by Act VIII, but only notes of the evidence, one which can be taken in —.—*Ib.*

126. Error in construing a decree not properly drawn, if it leads to a just and proper decision, cannot be considered as affecting the decision on its merits, and is not therefore a ground for —.—18 W. R. 336.

But when a judgment-debtor had not yet paid up the amount of the decree and was in no way prejudiced by a delay on the part of the creditor in appealing against the erroneous construction, the error was corrected in — where in other circumstances the appeal might have been too late.—21 W. R. 418.

127. In a suit for rent, the objection that plaintiff could not sue without the co-sharers joining him, which did not go to the merits of the case, was not allowed to be taken for the first time in —.—18 W. R. 376, 19 W. R. 91.

Nor for the first time in the Lower Appellate Court.—22 W. R. 489.

128. A Lower Appellate Court's omission to give reasons is not a ground for — when there is no error or defect in the decision on the merits. When the High Court thinks that reasons ought to have been given, the case should be retained on — but the proceedings returned for the supply of the omission.—18 W. R. 473.

129. Although a Lower Appellate Court's conclusion on the facts is bad in law, yet if it does not treat the evidence other than reasonably, there is no room for —.—18 W. R. 499.

130. Under s. 27 Act XXIII of 1861 a — does not lie in a suit against a law-agent employed on a salary to conduct and look after plaintiff's law-suits, to recover a balance of money unaccounted for, it being held that the case might be brought under the terms "claim for money due under a contract" in s. 6 Act XI of 1865.—20 W. R. 4, 24 W. R. 478. *See* 21 W. R. 283.

131. Payment by a co-sharer for cultivating land belonging to himself and the other co-sharers, is substantially rent, and no — will lie in such a case under s. 102 Act VIII of 1869 (B. C.)—20 W. R. 208.

132. The finding of a Judge in a rent suit that, although Rs 30-6-6 had for several years been paid by the tenant, Rs 29-15 only was paid as rent, the remainder being a kind of cess or fee for testing the coin paid, does not amount to a varying of the tenant's rent, and therefore no — lies under s. 102 Act VIII of 1869 (B. C.)—20 W. R. 270.

133. The High Court declined in — to interfere with the decision of a Lower Appellate Court on the ground of limitation, which decision was right in law though not correct in procedure.—20 W. R. 432.

134. In a suit for rent in which the defendant (*ryot*) sets up the title of a third person who is not made a party, the decision cannot be considered a binding decision in respect of title as between parties having conflicting claims to land within the meaning of s. 102 Act VIII of 1869 (B. C.)—21 W. R. 86. *See also* 22 W. R. 326, 23 W. R. 227, 24 W. R. 218.

So also where the third party intervened.—23 W. R. 408.

The word "title" in this section is synonymous with "ownership" or "proprietary right," but not with the right merely to receive or collect rents.—26 W. R. 100.

135. The word "may" in s. 372 Act VIII does not imply *may by some possibility*, but means *may not improbably*.—21 W. R. 57.

136. No general rule can be laid down as to when the reasons should be stated by an Appellate Court for believing one set of witnesses rather than another; and the omission of a Lower Appellate Court to state such reasons is not a ground for —.—21 W. R. 260.

137. In a suit for rent of land which plaintiff claimed under a deed of absolute sale, where defendant urged that he (defendant) was the beneficial owner while plaintiff's vendor was his benameedar,—*Held* that, as the Judge's decision did not determine any title to or interest in land, as between parties having conflicting claims thereto, and as the amount sued for did not exceed 100Rs., no — would lie under s. 102 Act VIII of 1869 (B. C.)—21 W. R. 302.

138. The omission of a party to prefer an appeal against an order of remand does not preclude him from questioning its legality when it comes up in — from the subsequent decision passed after remand.—21 W. R. 326.

139. A suit to recover possession of a share of a boat by establishment of plaintiff's right is for personal property within the meaning of s. 6 Act XI of 1865, and therefore no — lies in such a case under s. 27 Act XXIII of 1861.—21 W. R. 413.

140. The omission of the Lower Appellate Court to frame issues between the parties was held in — to be a good ground for remanding the case for re-trial on the merits.—22 W. R. 31.

141. An objection against the decision of the Lower Court ought not to have effect in — unless it be of such a kind as to indicate probable failure of justice. —22 W. R. 99.

142. Where in a suit for rent less than 100Rs. the decision turns upon whether in a former suit against plaintiff by a third party a decree was recovered for possession of a portion of the land now in dispute,—*Held* that as neither the land nor the rent of such portion was claimed by the defendant, the question of title was not decided between parties having "conflicting claims" thereto, and consequently no — lay.—22 W. R. 205.

143. A suit to recover a quantity of rice (or its value, 300Rs.) in return for some paddy taken by defendant under contract, was held to be cognizable by the Small Cause Court, and in — lay under s. 27 Act XXIII of 1861.—22 W. R. 259.

144. A mistake of account, not being an error in law or procedure, is not a ground for —; the remedy lies in an application for review.—22 W. R. 310, 25 W. R. 63.

145. A decision of the High Court over-ruling a decision of the Judge dismissing a suit for enhancement of rent on the ground that there had been no change of rent except a conversion from one kind of Rs. to another, was reversed by the Privy Council, who held that the High Court in — had nothing to do with the evidence, and that there was no evidence upon which (even if they could have been allowed to do so by law) they could come to a different finding from the Judge.—(P. C.) 22 W. R. 316.

146. The plea of *res judicata* may be taken in —, although not taken in the Courts below, if it is one which the Lower Appellate Court ought to have taken up and decided for itself.—22 W. R. 362. *See* 25 W. R. 28.

147. S. 102 Act VIII of 1869 (B. C.) was held not to bar a — in a case where the Judge had come to no determination at all, on the erroneous supposition that a review of judgment was improperly admitted.—22 W. R. 446.

148. Where there was a conflict of opinion between the first Court and the Lower Appellate Court as to the character and sufficiency of the evidence, the High Court in — went into and decided the question of evidence.—22 W. R. 487. *See contra* 23 W. R. 144. 25 W. R. 166.

149. Where a suit by a co-sharer for an aliquot part of rent below 100Rs. was decreed in the first Court but dismissed in the Lower Appellate Court as not maintainable,—*Held* that, although the Lower Appellate Court expressed no opinion as to the rights of the parties, yet the decree had determined questions between parties having conflicting claims to an interest in land within the words of s. 102 Act VIII of 1869 (B. C.)—23 W. R. 11.

Reversed in appeal on the ground that as the judgment of the Lower Appellate Court showed that a question of title was not even considered, the decree in general terms could not be held to have determined it, and consequently no — lay.—23 W. R. 268, 25 W. R. 153.

SPECIAL APPEAL (*continued*).

150. Where the evidence before the Lower Appellate Court was not sufficient in law to justify that Court in giving a decree for rent in excess of the amount decreed by the first Court, the High Court in — ordered it to be varied by making it accord with the decree of the first Court.—23 W. R. 149.

151. Act VIII of 1869 (B.C.) gives jurisdiction to Civil Courts to try suits brought for any cause of action arising under that Act; but it is a jurisdiction to try them according to Act VIII of 1859 except where it is otherwise provided by the former Act; and the — which would have been applicable to such cases under s. 372 Act VIII of 1859 has been taken away by s. 102 Act VIII of 1869 (B. C.)—23 W. R. 171.

152. Where parties allow a suit to be conducted in the Lower Courts as if a certain fact was admitted, cannot afterwards in — question it and recede from the tacit admission.—23 W. R. 174.

153*a*. Where a District Judge, as an Appellate Court, reviewed his predecessor's judgment and reversed his decision, and the High Court in — seeing no ground for such reversal, set aside the review and restored the original judgment.—23 W. R. 275.

153. Where a first Court, on remand for trial on certain issues, returned the case without any finding on two of the issues, and the Lower Appellate Court, after quoting the finding of the first Court and without any decision on the evidence, proceeded to decree the suit, the High Court, being unable in — to go into the evidence, remanded the case to the Lower Appellate Court to take such evidence as was necessary to decide the said issues if it considered that the evidence taken by the first Court was not sufficient.—23 W. R. 322.

154. In a suit for arrears of rent on the basis of a *shironamah* where the ryot denied that he executed the document and produced evidence to show that the rates mentioned in it were not correct,—*Held* that there was no question to vary the rent, and that it was only in a case of that sort that s. 102 Act VIII of 1869 (B. C.) allowed a —.—23 W. R. 343.

That is, where a question of right to vary the rent has been substantially raised.—24 W. R. 184.

And not where the question is whether the rent fixed by a previous decision has been subsequently altered and a new arrangement come to.—24 W. R. 49.

Or where both the Lower Courts have found on the question who was in enjoyment of the rent.—24 W. R. 479.

155. A suit for rent, in which there is no dispute as to the amount of the jumma, but only whether it is to be paid in instalments or in a lump sum, cannot be said to involve a question to vary the rent, and therefore no — lies under s. 102 Act VIII of 1869 (B. C.).—23 W. R. 385.

156. A suit for rent under 100Rs. is not taken out of the purview of the above section by the fact of the *rate of rent* having been varied by the decision of the Court unless the Court determined "the *right to vary the rent*."—23 W. R. 436, 25 W. R. 102.

157. A point was not allowed to be taken for the first time in — when it was not taken in the written memorandum of appeal nor even suggested in any of the Courts.—24 W. R. 35.

But an objection on a point of law may be taken at any stage of a case, even for the first time in —.—24 W. R. 95.

158. In a suit in which plaintiff claims rent as zemindar, and defendant, admitting his own tenancy, claims it as mortgagee, there cannot be said to be conflicting claims to a title to, or some interest in, land, within the meaning of s. 102 Act VIII of 1869 (B. C.), and no — lies.—24 W. R. 114.

159. An order granting a review, where there are no grounds upon which a review can be legally granted, is open to question in —.—24 W. R. 186.

160. For the Lower Appellate Court to discredit witnesses merely for general reasons not affecting the particular credit of any individual opponent, is to commit an error of law which can be the subject of a —.—24 W. R. 251.

161. The refusal of the Lower Appellate Court to interfere with the exercise of the first Court's discretion in not giving damages for defamation, after defendant has already been convicted and fined for the offence in the Criminal Court, on the ground that plaintiff had suffered no actual damage, even where such discretion has been improperly exercised, is not such an error in law as can be interfered with in —.—25 W. R. 22.

162. Where the Lower Courts have come to no decision on a point raised, the plaintiff in — has a right to a remand for the point to be tried even though very trifling.—25 W. R. 140.

163. A defendant cannot be allowed in — to urge that the issue framed in the Lower Court did not cover the whole of the objection raised by him in his written statement.—25 W. R. 214.

164. Where on an adjusted account between two parties, one claims from the other some money and some grain shown to be due to him, the claim is one which might have been enforced in a Small Cause Court, and a — does not lie under s. 27 Act XXIII of 1861.—25 W. R. 234.

See Ameen 28, 29.
Appeal 10, 83, 153.
Appellate Court 7.
Arbitration 57, 62, 90.
Certificate 79.
Churs 86.
Co-sharers 6.
Costs 13, 14, 28, 32, 50, 70, 98.
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Custom 4.
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Splitting Cause of Action 12.
Stamp Duty 4, 8, 14, 19, 77.
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Value of Suit or Appeal 11, 14.
Witness 8, 17, 39, 49.

Special Commissioner.

See Evidence (Documentary) 120.
Practice (Review) 15.

Specific Performance.

1. In a suit for — of a contract whereby defendant undertook to sell a share of a talook to plaintiff and to give him a portion of a share in the same talook, but failed to do so,—*Held* that defendant had every reasonable ground to conclude that plaintiff had abandoned his claim, when he had not only taken no steps to ascertain the assets of the property, but, under a mistaken belief of the insecurity of defendant's title, sued defendant, though unsuccessfully, for the refund of the earnest money.—Sev. 713.

2. Where defendants who were directed to pay mesne profits for certain lands which they had possessed under an invalid lakheraj claim, enter into a compromise with plaintiff, their zemindar agreeing that, if they default in rent, or if the lands become *khas* of the zemindar or become alienated, they will point out the lands, or failing to do this, will pay damages, plaintiff may obtain a decree for —, notwithstanding lapse of time and surrender of the lands.—W. R. Sp. 76.

3. — cannot be decreed in favor of a party who is incapable of performing his own part of the agreement. To entitle a party to —, he must show that he has been in no default and that he has taken all proper steps towards the performance of the agreement on his own part.—1 Hyde 45. *See also* 8 W. R. 280, 14 W. R. 338, 22 W. R. 187.

4. A suit lies for — of a contract in respect of an adjustment subsequent to, and for property beyond, the decree, notwithstanding s. 11 Act XXIII of 1861 which applies only to subject-matters relating to the decree.—3 W. R. 118.

5. In a suit for — of a contract where defendant pleads compulsion and intimidation, it is not enough for him to prove fear of a criminal complaint.—11 W. R. 313.

6. When in such a suit defendant pleads that the contract is void as opposed to public policy because based on the condonation of a criminal offence not condonable by law, he must show what the nature of the offence is.—*Ib.*

7. The High Court can order — of part of a contract and give damages for the breach of the remainder.—14 W. R., O. J., 15. *See* 24 W. R. 434.

8. In a suit for — of a contract, the cause of action is sufficiently shown by a statement of the terms of the contract followed by the averment of the refusal of the defendant to perform it, with a readiness and willingness of the plaintiff to do his part of it.—*Ib.*

9. In a suit for — of a contract to purchase,—*Held* that plaintiff was bound, if he had not tendered to defendant the purchase-money before bringing the suit, to have paid the money into Court when he brought the suit, and that the Court could not allow the plaintiff a period of three months after decree to pay the purchase-money.—15 W. R. 44.

10. *Quære.* Whether plaintiff can in the same suit ask for — of a contract to execute a bill of sale and for possession of the land covered by that deed.—15 W. R. 189.

11. A purchaser of a right to sue for the possession of property must, on bringing his suit, show that he is entitled to claim — of the contract from his vendor.—21 W. R. 101, 156; 22 W. R. 187.

12. A suit to enforce a contract by which a dispute was adjusted between a decree-holder and judgment-debtor, is not barred by s. 206 Act VIII.—22 W. R. 298.

See Assignment 15.
Bill of Sale 3.
Breach of Contract 10, 16, 19.
Cause of Action 5.
Contract 6, 7, 16, 27, 40, 46.
Ejectment 26, 98.
Husband and Wife 40.
Jurisdiction 285, 292, 496.
Limitation (Act IX of 1871) 45.
Maintenance 84.

See Marriage 40, 41, 42.
Principal and Agent 11.
Putnee Talook 41, 64.
Registration 92, 138.
Society 2.
Vendor and Purchaser 1, 9, 16, 17, 41, 50, 70.

Splitting.

The — of one aggravated offence into separate minor offences (*e.g.* lurking house trespass in order to commit theft under s. 457 Penal Code into lurking house trespass and theft under ss. 456 and 380) prohibited.—(F. B.) 6 W. R., Cr., 39. *See also* 6 W. R., Cr., 48, 92.

See Cumulative Sentences 2, 3.
Housebreaking 1.
Housebreaking by Night 2.
Limitation 250.
Practice (Execution of Decree) 230, 271.
Rent 95, 115.
Splitting Cause of Action.

Splitting Cause of Action.

1. Where a suit was brought for the fraudulent appropriation of a large amount of property, consisting partly of Government Paper, and the plaintiff obtained a decree,—*Held* that the plaintiff was not precluded by s. 7 Act VIII from afterwards bringing a fresh suit on a piece of Government Paper, which might have been, but which *by mistake* was not included in the previous suit.—2 Hay 190 (Marshall 286).

Over-ruled by the Privy Council who held that the true test in such cases is whether the claim in the new suit is in fact founded on a cause of action distinct from that which was the foundation of the former suit.—8 W. R., P. C., 3. *See also* 15 W. R. 408, 17 W. R. 122, (P. C.) 20 W. R. 450, 23 W. R. 418.

2. S. 7 Act VIII is applicable to suits for rent under Act X of 1859.—W. R. Sp. (Act X) 88 (3 R. J. P. J. 13). *But see* 17 W. R. 380.

3. *Quære.* Whether s. 7 Act VIII extends to cases of omission to ask for any particular description of relief which a plaintiff may intend to seek against the parties to the suit in respect of his cause of action.—1 W. R. 199. *See* 13 W. R. 261.

4. Where a plaintiff sued separately in two different Courts for two estates in two different districts under the same title as widow and representative of her husband, as there was but one cause of action, her proper course was held to be to proceed under s. 12 Act VIII; having omitted to sue in the first suit for a portion of her claim, her second (the present) suit was held barred by s. 7.—2 W. R. 148. *See also* 20 W. R. 77.

5. S. 7 Act VIII does not require distinct causes of action (*e.g.* arrears of rent for successive years) to be comprised in one suit but only forbids splitting a cause of action.—2 W. R. (Act X) 31 (1 R. J. P. J. 63), 17 W. R. 380, 24 W. R. 326.

6. Separate suits for rent cannot lie for different parcels of land all held under one lease.—2 W. R. (Act X) 36 (1 R. J. P. J. 110).

7. A suit by an heir for a portion, relinquished by his father, of a claim instituted by the father, is barred by s. 7 Act VIII.—3 W. R. 25.

8. A suit for value of cattle illegally taken away should include damages caused to plaintiff by defendant's wrongful act.—4 W. R., S. C. C., 20.

9. A suit for possession of land and reversal of an Act IV award, and a suit for damages on account of the materials of a house subsequently misappropriated, are distinct both as to time and cause of action.—5 W. R. 128.

10. S. 7 Act VIII does not require that rights under the same or similar titles involving different issues and arising under different dates and causes of action and against either only one party or different parties, should be sued for together.—5 W. R. 182 (*affirmed by P. C.*) 20 W. R. 450. *See* 15 W. R. 408.

Splitting Cause of Action (*continued*).

11. Plea of — under s. 7 Act VIII maintained in a suit for alluvial land.—5 W. R. 211. *See also* 22 W. R. 464.

12. Where a cause of action cognizable by the Principal Sudder Ameen was split into two suits and tried by the Sudder Ameen, and then heard in appeal by the Judge, it was held that, as the appeal would have lain to the Judge whether the case was originally tried by him or the Sudder Ameen, the error of the Judge (if he was not wrong) in not deciding in favor of the appellant (defendant) on the ground of jurisdiction was not one which affected the decision of the case upon its merits and therefore not a ground of special appeal.—5 W. R. 229.

13. A claim for rent in respect of a jumma which has become divided into a 14-anna and a 2-anna share, is properly the subject of one suit and should not be treated as two distinct causes of action for which separate suits are maintainable.—5 W. R. (Act X) 3.

14. When rents due in Azeemabad Rupees are sued for in (less valuable) Company's Rupees, the omission to sue for the difference bars the recovery of it in a fresh suit, according to s. 7 Act VIII.—5 W. R. (Act X) 90.

15. Where a plaintiff, urging false representations regarding the lots included in a putnee settlement, has, in a former suit to recover consideration-money and excess rents, obtained consequential damages, he cannot in a second suit get back so-called excess of rent paid by him in terms of the putnee pottah since the first suit.- 9 W. R. 121. (*Overruled by the next following.*)

16. Where, in a former suit, a putneedar sued his zemindar for abatement of rent and for a refund of consideration-money and rents paid by him for 3 years, it was held that a suit for refund of rent for 3 subsequent years was not barred under s. 7 Act VIII.—(F. B.) 10 W. R. F. B. 41.

17. The whole claim accruing under an execution sale should be included in one suit; and where compensation was omitted from the first suit on the same cause of action, the plaintiff was not allowed under s. 7 Act VIII to recover it in a separate suit.—13 W. R. 203, 261.

18. The whole of the demurrage claimable in respect of the detention of a boat must be sued for in one suit; otherwise, under s. 7 Act VIII, the portion omitted to be claimed cannot be claimed in a subsequent rent.—14 W. R. 253.

19. A suit for damages for wrongful detention of property (in this case a cart and bullocks seized in execution of decree against another party) is barred under s. 7 Act VIII after a decree in a former suit for the recovery or value of the same property.—18 W. R. 337.

20. A complainant is bound to bring forward in his suit all the grounds of origin of his right. A difference in the origin of the right is not a matter which makes a different cause of action.—22 W. R. 464.

See Cause of Action 12.
Instalments 23.
Jurisdiction 49, 502.
Mesne Profits 20, 81.
Relinquishment 1, 17, 22.

Stalls.

See Assessment 2.
Market 1.

Stamp Duty.

1. — leviable in pauper suits.—W. R. F. B. 53 (1 Hay 378, Marshall 174).

2. On an appeal from an order of non-suit passed in a suit pending when Act VIII of 1859 came into operation.—1 Hay 359.

2. In a suit for wasilat, the stamp on the plaint will be sufficient if it cover the amount claimed for wasilat, notwithstanding the defendants may deny the title of the plaintiff to the land.—1 Hay 370 (Marshall 165).

4. Plaintiff appealed against a dismissal of his suit to the Judge, who reversed the decision of the Lower Court and gave plaintiff a decree. Defendant appealed to the High Court on the ground that a document not properly stamped had been admitted in evidence in support of plaintiff's case. *Held* that the defendant, having omitted to take the objection before the Judge, could not appeal specially on this ground.—2 Hay 148 (Marshall 267), 6 W. R. 116. 12 W. R. 362.

5. After service of the plaint, and on the day the defendant was required to appear, the parties filed in Court deeds of compromise. *Held* that the plaintiff was entitled to a refund of the entire amount of —, there having been no settlement of issues.—2 Hay 213 (Marshall 274). *See also* 11 W. R. 158.

6. In exercise of the discretion vested in the Court by s. 334 Act VIII of 1859, the appellant was allowed to argue upon a ground not taken in his petition of appeal, on the understanding that he would make good the deficiency in —.—Sev. 42.

7. Where plaintiff sued several persons but served notice of action upon one of them and then filed a *razeenamah*, the Court, on striking off the case, refused an order for the refund of —, holding that the compromise was not one to which all parties interested were parties.—Sev. 929.

8. The — in special appeal and also in the appeal to the Lower Appellate Court was ordered to be refunded to a plaintiff whose plaint was wrongly rejected.—Sev. 967.

9. No appeal lies, under s. 350 Act VIII of 1859, against a decision on the ground that the Court admitted a document insufficiently stamped. According to cl. 1 s. 17 Act X of 1860, the document may be received on payment into Court of the proper amount of — to be determined by the Court.—W. R. Sp. 184.

So as to a document not stamped.—11 W. R. 520, 12 W. R. 47, 16 W. R. 6, 25 W. R. 376, *and* 47 *post*. *See also* 8 W. R. 367. 25 W. R. 554.

10. Under the old stamp law, agreements executed in Calcutta, by parties residing or carrying on business there, without the intention of pleading the documents in the Mofussil Courts, were good and binding.—W. R. Sp. 289 (L. R. 69).

11. Where a plaintiff declines to pay the — and penalty on an unstamped document, the Court, instead of dismissing the suit, should enquire into the merits on the rest of the evidence produced in the case.—W. R. Sp. 321.

12. Before rejecting a petition of appeal on the ground that it is insufficiently stamped, the Court ought to require the appellant to supply additional stamp paper.—W. R. Sp., Mis., 4.

13. The — on the petition of appeal is refundable in cases remanded under s. 351 Act VIII, but not under ss. 354 and 356.—1 W. R., Mis., 12.

14. Miscellaneous or special appeal not admissible on insufficient —.—1 W. R., Mis., 25.

15. An appeal does not lie from an order of the Lower Court, made on an application for refund of — and penalty, after a case remanded to it had been compromised. Redress should be sought by way of motion rather than as an appeal.—2 W. R., Mis., 36.

16. *Quære.* Whether the penalty is returnable.—*Ib.*

17. In valuing a suit relating to a share of land, the rental of the share is to be the criterion of the stamp.—2 W. R., Mis., 45.

18. A *mourosee* pottah is not required to be written on stamped paper.—3 W. R. (Act X) 143.

19. Under cl. 1 s. 17 Act X, no special appeal lies from the order of a Judge admitting an insufficiently stamped pottah on payment of full — and penalty.—3 W. R. (Act X) 158.

20. In a suit for damages for breach of an indigo contract, the stamp depends upon the amount of consideration for the undertaking.—3 W. R., S. C. C., 14 (S. C. C. 148); 5 W. R., S. C. C., 10.

21. The — on a plaint upon an instalment bond should be estimated, not on the amount of the whole bond, but on the amount claimed in the suit.—4 W. R., S. C. C., 12.

22. The mere omission to stamp a copy of a document, the original of which is the basis of a suit, does not justify the dismissal of the suit.—6 W. R. 49.

23. In a suit under Act VIII or Act X the value of stamps used in enforcing a decree should be included in the judgment.—6 W. R. (Act X) 8.

24. When a suit is remanded in part, the appellant is entitled to only a proportionate refund of —.—(F. B.) 6 W. R., Mis., 65. *See* 9 W. R. 357.

STAMP DUTY (*continued*).

So also, where there has been no final decision, a refund of — should be allowed.—18 W. R. 434.

25. Where no application was made to the Lower Court to receive unstamped receipts for rent on payment of the — and penalty, the Appellate Court cannot order their admission on such payment.—7 W. R. 439.

26. An objection under s. 348 Act VIII must bear the stamp duty required by Act XXVI of 1867 Sch. B Art. 11 Note (*c*), though a petition setting out the grounds had been filed before the passing of the latter Act.—7 W. R. 452, 462.

27. Applications to the High Court for copies and translations of the judgment, decree, or other document, may be on a stamp of one anna, under Sch. B Art. 10 cl. 6 Act XXVI of 1867.—7 W. R. 455.

28. A petition of appeal, returned for irregularity before, but filed again after, Act XXVI of 1867 came into force, was required to be stamped according to that Act.—7 W. R. 461.

29. When the appeal of an appellant is against the whole of the decision of the Lower Court, and upon the full value of the original suit, no additional — is required in respect of the respondent's objection under s. 348 Act VIII.—8 W. R. 124.

30. A *solehnama* admitting a claim and agreeing to pay by instalments is not a petition within the meaning of Art. 10 Act XXVI of 1867, but an agreement within the meaning of Sch. A Act X of 1862.—8 W. R. 214.

31. A *razeenama* stating satisfaction of claim, and withdrawing a suit upon a bond, is more an application than an agreement.—*Ib.*

32. A suit for declaration of title to a fractional share in a zemindaree paying revenue is not a suit for lands with a defined jumma, and should be valued according to Note (*c*) cl. 11 Sch. B Act X of 1862.—8 W. R. 437.

33. The rule of Circular No. 31, dated 3rd October, 1864, extends also to *plain* paper filed under the general rule at the end of Sch. B Act X of 1862, when the copy cannot be comprised within the *stamp* paper put in.—9 W. R. 138.

34. An appeal from an order declaring a person claiming to be in possession of property taken in execution to have no *locus standi* in the execution case, is a miscellaneous appeal, and should be on a stamp for an ordinary petition.—9 W. R. 139.

35. Note (*c*) Art. 11 Sch. B Act XXVI of 1867 contains no reservation as to — leviable on an objection under s. 348 Act VIII filed by a pauper respondent.—9 W. R. 356.

36. Relative to the examination of stamps, and applications for refund of —.—9 W. R. 357.

37. A suit to resume lands claimed as lakheraj falls in respect of — under Note (*d*) Art. 11 Sch. B Act X of 1862; the term "revenue" being read as meaning revenue or rent.—9 W. R. 395.

38. A sunnud which authorizes a gomashta to attach rents and to sue for them must be stamped; if a general power of attorney authorizing him to collect and sue for rents, then under Art. 43 Sch. A Act X of 1862.—(F. B.) 10 W. R. F. B. 39. *See* 11 W. R. 43.

39. Where an appeal insufficiently stamped is admitted and heard, the Court is bound to deal with it on its merits, and cannot limit its relief to so much of the subject in suit as seems to be covered by the amount in respect of which the stamp was given.—10 W. R. 242.

40. Where defendants object that a plaint is undervalued, and a supplemental plaint with the required stamp is put in and received, the irregularity does not affect the merits of the case, or call for a reversal of the Lower Court's decision.—10 W. R. 286.

41. Ss. 308 and 309 Act VIII do not exempt a pauper from payment of —, and if necessary of the penalty, on documents which he wishes to put in evidence.—10 W. R. 358.

42. An endorsement upon a pottah transferring it for a consideration not exceeding 100Rs. is not admissible in evidence unless it bears the proper stamp.—11 W. R. 365.

43. Where obligors in urgent want of money, and unable to procure a stamp, execute a bond on plain paper agreeing to make good any penalty that obligees may have to pay in suing to enforce the obligation, this is not an agreement to evade —.—11 W. R. 553.

44. Where an instrument contains several distinct contracts, and as such requires several stamps, it may be used as evidence of one contract for which it was stamped, although it would not be admissible as evidence in respect of the contract for which it was not stamped.—(F. B.) 12 W. R. F. B. 11.

45. A promissory note is sufficiently stamped if the stamp is sufficient to cover the principal sum secured by the note.—12 W. R., O. J., 1.

46. Under s. 17 Act X of 1862, and s. 130 Act VIII, only insufficiently stamped, and not unstamped, documents can be received in evidence on payment of the proper —.—12 W. R. 47. *See* 64 *post.*

47. Unstamped receipts accepted by the first Court must be considered as evidence by the Appellate Court; the first Court's decree cannot be reversed or modified, under s. 350 Act VIII, for want of the stamps.—*Ib. See also* 14 W. R. 68, 15 W. R. 179, 23 W. R. 170, 25 W. R. 554. *See* 9 *ante.*

48. The rule allowing refund of — (s. 98 Act VIII as modified by s. 26 Act X of 1862) is not applicable to appeals which may be compromised.—12 W. R. 376.

49. A petition of appeal may be received on several stamps sufficient to make up the full amount required by law, even though the petition is written on one paper.—12 W. R. 449.

So also as to Court fees.—16 W. R. 152, 153; 17 W. R. 220.

50. The objection that a bond was engrossed on an 8-annas' stamp threaded to other stamps aggregating the full value, was held to be merely technical.—13 W. R. 41.

51. It is competent to the Judge of a Small Cause Court, under ss. 15 and 17 Act X of 1862, to find on the facts before him whether the absence of a stamp on the leaf of a khattah book adduced as evidence was owing to an intention to evade payment of the —, without the necessity for a reference to the High Court.—13 W. R. 102.

52. Where in a pauper suit for possession decreed with mesne profits to be ascertained in execution, costs are awarded including the value of the — to be paid in proportionate shares, and plaintiffs and defendants, although called upon by the Court, refuse to appear,—*Held* that the Court has no power to alter its original order and make the — realizable from both parties jointly.—31 W. R. 155.

53. A contract taken by the Public Works Department for the execution of works falls within Article 11 Sch. II Act XVIII of 1869.—13 W. R. 353.

54. Where a contractor's sureties give bonds for the performance by him of his agreement, the bonds are chargeable with — under Article 5 Sch. I.—*Ib.*

55. Cl. 3 Note (*b*) Art. 11 Sch. B Act XXVI of 1867, by authorizing a Court to direct a local or other investigation as to the market value or annual profits of any property, does not restrict the Court to an Ameen's report in the matter, but allows the Court the benefit of an Ameen's investigation as provided for in other matters in the Code of Civil Procedure.—13 W. R. 415.

56. The same law, by providing that the decision of a Court as to the market value or annual profits of property in suit shall be final, repeals by implication ss. 31 and 36 Act VIII whereby an appeal is allowed from the order of a first Court rejecting a plaint for improper valuation.—*Ib.* (*Over-ruled by F. B.*) 68 *post. See also* 14 W. R. 381.

57. In applying the Stamp Law, the — must be paid upon what is stated in the instrument and cannot depend on collateral evidence.—14 W. R., O. J., 38.

58. Thus a promissory note payable on demand ought to be stamped as such, although there may be a collateral agreement between the parties that the holder will not present it for a given time, or, if paid on demand, that the maker of the note shall be entitled to a certain amount of discount being deducted.—*Ib.*

59. Where excess stamps had been filed in consequence of an over-valuation of the appeal, the surplus amount was ordered to be refunded.—14 W. R. 47. *But see* 20 W. R. 106.

60. A petition for a lease, when used as evidence of a contract to be entered into between parties, is not subject to the payment of —.—14 W. R. 178, 334.

61. According to Note (*a*) Sch. B Act XXVI of 1867, the value of the property in dispute in a suit for pre-emption was taken to be that which he was willing to give for it and not 10 times the Sudder jumma of the property.—14 W. R. 228.

62. The decision of a Court under cl. 3 Note (*b*) Sch. B

STAMP DUTY (*continued*).

Act XXVI of 1867, as to the market value of immoveable property, passed after objection made, is final without an enquiry under commission.—14 W. R. 451.

63. No objection was taken to a document in the first and Lower Appellate Courts on the ground that it was not stamped, but after its production an insufficient stamp of 2 annas was put upon it. The High Court on appeal left the deed as part of the evidence in the case, but qualified its effect and the extent of its operation. *Held* that the High Court might either have refused to admit the document for want of a stamp (though that would hardly have been just seeing that no objection had been raised to its admission in either of the first two Courts), or (what would have been a better course) required the deed to be properly stamped and the penalty paid, but that the course taken was entirely without precedent, without principle, and without authority.—(P. C.) 15 W. R., P. C., 32.

64. Act XVIII of 1869 allows the Civil Court to receive the proper amount of — not only in cases of insufficiency of stamps, but also where documents have not been stamped at all.—15. W. R. 116. *See* 46 *ante*.

65. Where Government, after attaching a pauper plaintiff's decree in order to recover the value of — under s. 309 Act VIII, consents to the sale of the decree in execution of another decree against the pauper, and obtains an order by which it secures the chance of any surplus arising from such sale, it cannot afterwards, when the sale is found to yield no surplus, be heard to say as against the purchaser that the decree was sold subject to its claim for —.—15 W. R. 205.

66. The amount of — in a pauper case cannot be claimed as a lien or charge upon the decree in favor of Government, but is recoverable in the same manner as costs of suit, Government being in no higher position than an ordinary judgment-creditor.—*Ib.*

67. An appeal from a declaratory decree giving consequential relief should bear an *ad valorem* —.—15 W. R. 412.

68. Whenever a plaint is rejected under s. 30 Act VIII on the ground that the amount or estimated value of the claim is beyond the jurisdiction of the Court, an appeal lies, under s. 36, from the order rejecting the plaint, notwithstanding Note (*b*) to Sch. B Act XXVI of 1867, which cannot repeal by implication the provisions of Act VIII.—(F. B.) 16 W. R. F. B. 10. *See also* 20 W. R. 33.

69. According to Note (*a*) Sch. B Act XXVI of 1867, the market value was to be assumed as the proper valuation; if disputed or doubted, the Court was at liberty to make an enquiry, on the result of which enquiry the valuation of the suit was to be made, and the decision of the Court with reference to such valuation was final.—16 W. R. 5.

70. No *ad valorem* — is payable under Act XVIII of 1869 upon a conveyance where the consideration consists of shares in a Public Company.—16 W. R. 208.

71. The word "amount" in Art. 15 Sch. I of the above Act signifies the sum total, or amount of money, forming the consideration; and the words "or secured" apply only to cases of mortgages and the like, and not to an out-and-out conveyance.—*Ib.*

72. No larger sum can be recovered under s. 14 Act XXXVI of 1860 upon a bond executed on an optional stamp than is covered by that stamp, and no amount of penalty can make up the deficiency in the —.—17 W. R. 131.

73. There is no rule which requires as much as possible of the substance of the plaint to be engrossed on stamped paper; and so long as the rule against the use of a larger number of stamps than is absolutely necessary is complied with, it is not material whether the plaint commence or end on plain paper.—18 W. R. 326.

74. A substituted lease must be stamped with the stamp provided for a lease.—20 W. R. 36.

75. A suit cannot be maintained upon an unstamped promissory note payable on demand; in such a case the plaintiff, if he recovers at all, must do so, not on any implied contract, but on the contract actually made and by the production of the writing, which, if unstamped, is not admissible as evidence under cl. 25 s. 3 Act XVIII of 1869.—21 W. R. 1.

76. *Quære*. Whether s. 18 prevents a defendant's written statement and deposition from operating as an admission rendering it unnecessary for plaintiff to put the written contract in evidence.—*Ib.*

77. Where an unstamped document was not admitted as evidence and the penalty proffered with reference to s. 130 Act VIII was refused,—*Held* that the refusal should have been made a ground of objection in appeal, but could not be interfered with in special appeal.—21 W. R. 183.

78. A Judge has no authority to admit an unstamped document in evidence, except under the conditions prescribed in Act XVIII of 1869, even when it was executed before the date when that Act came into operation.—21 W. R. 446.

79. A document in which a party, for value received, undertakes to pay a certain sum of money on or before a specified date, and interest thereon from another date if the sum is not paid before, cannot be treated as a bond, but is in substance a promissory note within the meaning of s. 28 of the same Act.—*Ib.*

80. An instrument which acknowledged receipt of a sum of money and provided for the payment of interest at a specified rate per mensem, was held to be an agreement falling within Art. 11 Sch. II Act XVIII of 1869.—23 W. R. 403.

81. Where a Judge admitted an unstamped document after payment of — and penalty under s. 20 Act XVIII of 1869, and endorsed on it a certificate that the proper — had been levied, but found out afterwards that the original omission was owing to an intention to evade payment of —,—*Held* that the certificate was not such as was contemplated by s. 20 and did not make the document admissible; and that the Judge ought, under s. 22, to have impounded the document and sent it to the Collector.—24 W. R. 88.

82. A document is receivable on being duly stamped, and as bearing the stamp required by the law, for the purpose of the trial in which the document is tendered in evidence; and it is no business of the Court to enquire what time the stamp was affixed, or whether the provision of the stamp law was duly observed, which is a matter connected with the law as to penalties.—24 W. R. 198.

83. Even if the document were not admissible, plaintiff might recover on such part of the case as he could make out by other evidence (provided it is not barred by limitation) notwithstanding that he had in his plaint referred to such document as the basis of his suit.—*Ib.*

84. According to s. 31 Act VIII the Deputy Registrar has no authority to reject an appeal insufficiently stamped.—24 W. R. 258,

85. In a running account, a balance brought forward from the close of a previous year is not to be considered a *new* balance requiring a fresh stamp; Art. 5 Sch. II Act XVIII of 1869 providing for one stamp only to be affixed in such a case.—24 W. R. 439.

86. That which the Magistrate has to adjudicate upon, on a prosecution coming before him under s. 24 Act XVIII of 1859, is whether an offence against the Act has been committed, and whether the prosecution has been brought before him by the proper officer. Any person who commits an offence within s. 29 *et seq*, and is prosecuted by the Collector or other officer duly empowered, may be convicted by the Magistrate under s. 44.—24 W. R., Cr., 1.

87. If an instrument of the nature of a promissory note or the like, and as such liable to —, is not duly stamped, the person subject to the penalty is he who makes it, and not he in whose favour it is made.—*Ib.*

88. Where a Court of first instance erroneously admits a document without a stamp, the error, being one which does not affect the merits of the case as between the parties, does not constitute a proper ground of appeal.—25 W. R. 80, 376.

89. Orders upon tenants to hold themselves responsible to a particular person to whom a release has been made by their landlord, are not documents requiring to be stamped in order to be admissible in evidence.—25 W. R. 80.

90. A document tendered in evidence cannot be rejected as not being properly stamped, without a formal order rejecting it and a direction to pay in the — and fine.—25 W. R. 116.

91. A *hat-chitta*, drawn up by only one of two parties to a money transaction, and purporting to represent the balance of accounts between them, but not assented to in any way by the other party, is not such a document as is contemplated by Article 5 Sch. II Act XVIII of 1869, and does not require to be stamped.—25 W. R. 361.

STAMP DUTY (*continued*).

See Appeal 107.
Arbitration 12, 16.
Certificate 95.
Court Fees 2, 5, 6, 28.
Decree 24.
Ejectment 8*a*.
Evidence (Documentary) 10, 88, 104, 124.
Forgery 28.
Intervenor 27.
Irregularity 22.
Limitation (Act XIV of 1859) 237.
Measurement 14.
Mesne Profits 21.
Mortgage 204.
Objection (under s. 348 Act VIII of 1859) 14.
Possessory Award 8.
Practice (Possession) 80.
„ (Review) 40, 90.
Privy Council 18, 27, 61, 80.
Value of Suit or Appeal 2, 6, 8, 11, 14, 16.
Waste Land 6.

State Offences.

0. Any subject of the British Government is liable to be tried for acts done within or without British territory.—2 W. R., Cr., 60.

1. In enacting s. 121 Penal Code, no limitation has been prescribed as to the period within which a prosecution for an offence against that enactment may be commenced.—15 W. R., Cr., 25.

2. *Quære.* Whether, with reference to s. 28 Act II of 1855, a prisoner charged with treason can be convicted on the evidence of a single witness.—*Ib.*

3. The issue of a warrant of commitment by the Governor General in Council, under Reg. III of 1818, cannot be treated in the nature of a *conviction* of the person so placed under restraint, so as to give immunity, to the person so convicted and afterwards discharged, from all — committed before that period on the ground that he has already been tried, convicted, and punished.—17 W. R., Cr., 15.

See Forfeiture 20.
Information 2.
Jurisdiction 427.
Rebel.

Statute of Frauds.

1. S. 17 of the — does not affect Hindoo or Mahomedan defendants.—1 Hyde 51. *See* 14 W. R. 305.

2. S. 4 of the — does not apply to a Hindoo (or *semble* Mahomedan) defendant.—14 W. R. 305.

See Evidence (Oral) 8.

Statutes.

13 Eliz. c. 5. *See* Assignment 8.
Debtor and Creditor 2.
27 Eliz. c. 4. *See* Conveyance 18.
Debtor and Creditor 2.
29 Car. II c. 7. *See* Sunday 2.
29 Car. II c. 27. *See* Carrier 2.
21 Geo. III c. 70 s. 21. *See* Privy Council 4.
53 Geo. III c. 155 s. 105. *See* Bailiff 1.
High Court 111.
„ „ s. 106. *See* Jurisdiction 381.
„ „ s. 426. *See* Bailiff 1.
9 Geo. IV c. 74 s. 56. *See* Construction 6.
Jurisdiction 125.
3 & 4 Wm. IV c. 41. *See* Limitation (Reg. II of 1805) 7.
5 & 6 Wm. IV c. 45. *See* Marriage 4.
2 & 3 Vic. c. 39. *See* Guardian 7.
5 & 6 Vic. c. 39. *See* Factors 1.
5 & 5 Vic. c. 122. *See* Insolvency 2.
11 Vic. c. 21 s. 26. *See* Insolvency 10.
„ s. 60. *See* „ 2.
„ s. 72. *See* „ 9.
21 & 22 Vic. c. 106 s. 65. *See* Jurisdiction 485.
21 & 22 Vic. c. 126. *See* Arrest 1.
24 & 25 Vic. c. 104 s. 12. *See* High Court 176.
s. 15. *See* High Court 26, 42, 49, 56, 59, 62, 63, 67, 69, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 95, 96, 97, 101, 103, 104, 110, 131, 138, 139, 142, 161, 168, 172, 175.
Jurisdiction 500.
Practice (Execution of Decree) 115.
Practice (Parties) 25.
Privy Council 86.
See Mutiny Act.
Statute of Frauds.

Step-Brother.

See Hindoo Law (Inheritance and Succession) 52.

Step-Mother.

See Guardian 22.
Hindoo Law (Inheritance and Succession) 2, 22.
Marriage 20, 25.

Stolen Property.

1. A person convicted of robbery or theft cannot also be convicted of dishonestly receiving —.—1 W. R., Cr., 27.

2. Theft and retention of — by the same person form one offence and cannot be punished separately.—2 W. R., Cr., 63 (4 R. J. P. J. 563); 11 W. R., Cr., 12.

Although a person convicted of theft cannot also be convicted of being in possession of — (the offences being one and the same), it does not follow that because an accused person, charged with both theft and receiving —, is acquitted of the first offence, he should be free from liability to answer the second.—25 W. R., Cr., 47.

3. Evidence of guilty knowledge is necessary to a conviction on a charge of dishonestly receiving —.—6 W. R., Cr., 87; 13 W. R., Cr., 70.

4. Recognition of things not produced at the trial and not before the eyes of deposing witnesses is not evidence against a prisoner accused of having been in possession of those things.—8 W. R., Cr., 16.

5. The Police may, without any formal complaint, apprehend any person found with —.—8 W. R., Cr., 28.

6. Procedure to be followed before making order confiscating —.—9 W. R., Cr., 13.

7. A Deputy Magistrate restored to an accused money found in his house along with —, the prosecutor having failed to prove that the money was his. The Sessions Judge on appeal reversed that order and directed the money to be made over to the prosecutor. *Held* that the order of the Sessions Judge was made without jurisdiction, and that the order of the Deputy Magistrate could not be interfered with by the High Court as a Court of Revision.—9 W. R., Cr., 57.

STOLEN PROPERTY (*continued*).

8. Where property sufficiently identified to be the property of one person is found to be in the possession of another person, without leave or license or any legal permission of the owner, it is for the party in whose possession the property is found duly to account for its possession; and unless he can do so, a jury may fairly infer in such circumstances that it was with a guilty knowledge that the prisoner took that which he knew to be not his own.—13 W. R., Cr., 26. *See also* 25 W. R., Cr., 10.

9. Where a case of possession of — was held to fall under s. 411 and not s. 412 Penal Code.—18 W. R., Cr., 25.

10. Smuggling india-rubber is not an offence under s. 411 Penal Code without proof of guilty knowledge on the part of the accused that the rubber had been stolen.—18 W. R., Cr., 63; 19 W. R., Cr., 37.

11. Possession of — is generally at best only evidence of theft, but not *per se* evidence of the possessor being the receiver of —, still less of his habitually dealing in —.—23 W. R., Cr., 16.

12. Money obtained upon forged Money Orders is not — within the definition thereof given in s. 410 Penal Code. —24 W. R., Cr., 33.

See Conversion 1.
Dacoity 1, 3, 5.
Jurisdiction 228.
Jury 5.
Principal and Surety 28.

Stone-Quarry.

See Jurisdiction 328.

Streams.

See Water 1.

Streedhun.

1. Ancestral property which descended in regular succession, but with the ordinary life-interest vested in Hindoo widows, from the original ancestor first to his widow, and then through her to a daughter, and then to a daughter's son who was in proprietary possession until he forfeited the property by an act of rebellion, was held not to be —. —Sev. 354.

2. A woman can dispose of — at pleasure, either by gift or will or sale, except in the case of immoveable property given to her by her husband.—3 W. R. 49.

3. The word "inherited" used in the Mitacshara in regard to a woman's — does not include immoveable property so as to make it her *peculium*, but refers only to personal property over which alone she has absolute dominion.—3 W. R. 105.

4. According to the Mitacshara and Vivada Chintamonee, *all* property inherited by a woman does not become —; immoveable property, inherited from her son, descends on her death to his heirs.—3 W. R. 140. *See also* 22 W. R. 496.

5. A gift of money by a son to his mother for the purpose of maintenance of the mother, comes within the definition of — in the Hindoo law.—5 W. R., Mis., 53.

6. According to the law of the Benares school, no part of her husband's estate, whether moveable or immoveable, to which a Hindoo widow succeeds by inheritance, forms part of her —; and the text of Katyayana cited must be taken to determine (1) that her power of disposition over both is limited to certain purposes, and (2) that on her death both pass to the next heir of her husband.—(P. C.) 9 W. R., P. C., 23. *See also* 22 W. R. 496.

7. *Sowdaick* — created by the husband does not descend to his heirs.—10 W. R. 139.

8. According to the Dayabhaga, a betrothed daughter does not inherit her mother's — or any part of it.—10 W. R. 488.

9. When a woman's separate property has once devolved as — upon an heir, it no longer devolves as —, but according to the ordinary rules of Hindoo law.—*Ib.*

10. The devolution of — from a childless widow is regulated under the Mitacshara by the nature of her marriage; and if the marriage was according to the four approved forms, the — goes to the collateral heirs of her husband.—(P. C.) 10 W. R., P. C., 3. *See* 22 W. R. 496.

11. The mesne profits accruing from property transferred to a childless widow by her father under a *hibbah* (the proprietary right passing at her death to her brother's grandsons) must be regarded as — to which her heirs only, and not her father's, are entitled.—11 W. R. 497.

12. According to the Bengal law, the husband is entitled to succeed to the property which a woman receives from her father, either before or after her marriage, in preference to her brother or mother.—16 W. R. 105, 115.

13. According to the Bengal law, property coming from a father to a daughter before her marriage under a testamentary devise, falls within the category of — which is described in the Hindoo shasters as property given to a woman by her father before her marriage. On her death, the mother, and not the husband, is the preferential heir to such property.—19 W. R. 264.

14. Under the Hindoo law a married woman is at liberty to make any disposition she likes of money constituting her —; and if she purchases immoveable property with such —, she has a right to sell that immoveable property.—(P. C.) 19 W. R. 292.

15. Where the husband during his lifetime did in every way, both publicly and privately, whenever called upon to make any representation on the subject, always represent that certain immoveable property was his wife's, the purchasers from her could not after his death be equitably turned out of the property in favor of his heirs. The heirs, after his death, would be as much bound by the father's misrepresentations as he would have been during his life.—(P. C.) *Ib.* *See also* 24 W. R. 391.

16. Where a Hindoo wife is entitled to an absolute estate in certain property (as —), her husband cannot cut down her interest to a life-interest by any *dowl* which he may make.—(P. C.) 23 W. R. 184.

See Hindoo Law (Adoption) 39, 40.
,, Widow 72.
Onus Probandi 45, 107.

Sub-lease.

1. Some 3000 beegahs had been held by M under M S who was then the Government lessee, but the Collector resumed the grant made to M S. Subsequently M and his brother A obtained from the Collector a pottah of the grant after it was thus resumed, conferring upon them and their heirs the Government grant of the lands to the extent of 20,000 beegahs. The mere circumstance that M held a — for 3000 beegahs when M S held it as Government lessee, and that M at the time had empowered his son to act for him on all necessary occasions, cannot be regarded as affecting the title of A the brother of M acquired from the Government jointly with his brother M through the formal pottah in their favor.—Sev. 1.

2. Where a sub-lessee (*kutkinadar* from a *zur-i-peshgeedar*) pays the Government revenue on the default of the *malik* who sells the estate to escape liability, the obligation to repay the same is a personal liability on the part of the *malik*, and cannot be enforced against the estate.—W. R. Sp. 132.

3. In a suit against co-sharers and dur-ijaradar for rent and damages in respect of a mehal of which a — was granted by the defendant co-sharers, it appeared that plaintiff did not get possession of his share until after the expiry of the —, and then only by the aid of the Civil Court, that his title during the subsistence of the — was merely nominal, and that he exercised no rights of a landlord during this period, and could not have sustained against the dur-ijaradar an action for rent under Act X of 1859. *Held* that his suit was properly brought in the Civil Court, and that, as the dur-ijaradar was in no way the plaintiff's tenant and had not joined in obstructing plaintiff from getting possession of his share, the co-sharers alone were liable, and not the dur-ijaradar also.—W. R. Sp. (Act X) 49.

4. A zemindar is not bound to recognize the sub-division of a jote. The purchaser of a part of the jote is jointly liable with the other holders for the rent of the whole jote. —W. R. Sp. (Act X) 79 (2 R. J. P. J. 356).

SUB-LEASE (*continued*).

5. A sub-lessee's rights cannot be prejudiced by the omission of his lessors to sue, or by any act of theirs in fraud of his interests.—2 W. R. (Act X) 89.

6. When a lessor gives his lessee power to sub-let, and the latter sub-lets, the sub-lessee obtains rights against both of which he cannot be deprived without his own consent. The lessee's surrender of his lease cannot operate to the prejudice of the sub-lessee.—13 W. R. 281.

7. Where a lessee sub-lets land, the sub-lessees can have no more right to use the land in contravention of the original lease than their lessor had.—20 W. R. 230.

8. A lessee cannot make a — for a longer time than his own lease.—22 W. R. 274.

Nor can a farmer or leaseholder do so to the prejudice of the owner.—25 W. R. 347.

9. Where a — specifies no term of tenancy, it cannot be construed to have effect beyond the interest of the grantor.—22 W. R. 274.

See Declaratory Decree 27.
Landlord and Tenant 22, 46.
Lease 11, 23, 48.
Limitation 194.
Middlemen 2.
Mokurruree Tenure 19.
Nowabad 1.
Occupancy 19, 74, 81.
Trespasser 1.
Zur-i-peshgee Lease 8.

Substitution.

See Appeal 88, 111, 202.
Champerty 1, 8.
Ejectment 111.
Joinder of Parties 26.
Jurisdiction 80.
Limitation 140.
Practice (Appeal) 59.
,, (Execution of Decree) 94, 167, 172.
,, (Parties) 25, 35.
Sale 217.
Service 6.
Special Appeal 84.

Sub-talook.

How an unregistered holder of a — can stop a sale under a decree.—2 W. R. 282. *See* (P. C.) 20 W. R. 380.

Succession.

1. The law applicable to the — of any individual (when there is no *lex loci* of the province in which he is domiciled) depends on his personal *status*, which again mainly depends on his religion. Thus the — of a Hindoo would be regulated by Hindoo law, of a Mahomedan by Mahomedan law, and of an East Indian Christian by English law; but in every case, for the purpose of determining the *status personalis*, regard was to be had to the mode of life and habits of the individual and to the usages of the class or family to which he belonged. If no specific rule can be ascertained to be applicable to the case, then the Judges administering justice in the province are to act according to justice, equity, and good conscience.—(P. C.) 1 W. R., P. C., 1 (P. C. R. 501); 13 W. R., P. C., 41.

2. The jurisdiction in granting probates and letters of administration under the Indian — Act X of 1865 s. 235 is vested in the Judicial Commissioner in Assam.—12 W. R. 424.

3. S. 282 Act X of 1865 does not interfere with the right of a decree-holder, under s. 203 Act VIII of 1859, to have his decree satisfied out of the property of the deceased person to the exclusion of other creditors, after deducting the expenses under ss. 279 to 281 of the former Act.—17 W. R. 513.

4. The definition in Act X of 1865 of "minor" and "minority" does not apply in cases where a person enters into a contract on his own behalf and not in any representative character under that Act, but only in cases of intestate and testamentary —.—(O. J.) 21 W. R. 221.

5. Since the passing of Act X of 1865, the Courts in this country must look to that Act, and it alone, for the law of British India applicable to all cases of testamentary or intestate —.—25 W. R. 489.

See Endowment 13, 16.
Hindoo Law (Inheritance and Succession).
,, ,, (Migration) 1.
Illegitimate Child 1.
Judgment 13.
Limitation (Act XIV of 1859) 84.
Mahomedan Law 7, 17, 18, 19, 22, 25, 26, 27, 28.
Mokurruree Tenure 1.

Suicide.

See Escheat 2.
Suttee.

Suit.

Second suit for same subject-matter.—*See* Appeal 21; Boundary 3; Fresh Suit; Jurisdiction 79; Practice (Execution of Decree) 22; Right to sue 3.

See Action.
Appeal 48, 51, 178, 185.
Auction-Purchaser (Execution Sale) 48.
Bond 6.
Charge 5.
Construction 21.
Debtor and Creditor 5.
Dismissal of Suit or Appeal.
Fresh Suit.
Interest 5.
Joinder of Parties.
Jurisdiction 426.
Pauper Suit or Appeal.
Principal and Agent 46.
Registration 43.
Special Appeal 24.
Suit on Document.
Supplemental Suit.
Trust 7.
Value of Suit or Appeal.
Will 20.
Withdrawal of Suit or Appeal.

Suit for Money.

1. Money paid under compulsion of law cannot be recovered in a — had and received.—W. R. Sp. 205.

2. A — will lie in a case where money was paid over at the instance of a judgment-creditor under a wrongful order of Court.—10 W. R. 485.

3. Before bringing a suit to recover back money which defendant had received in a Collector's Court in execution of a decree, and which he was no longer entitled to retain, plaintiff is not bound to make application to the Collector.—17 W. R. 14.

4. A — realized in execution of a decree will lie if the decree is set aside as regards the party seeking to recover and if he was not a party to such decree.—21 W. R. 346.

See Bond 21.
Construction 180.

SUIT FOR MONEY (*continued*)

See Damages 97, 104.
Evidence (Documentary) 125.
Interest 76.
Joinder of Causes of Action 4.
Jurisdiction 10, 19, 48, 81, 187, 218, 282, 342, 360, 364, 395, 507.
Limitation 203, 229, 232.
,, (Act XIV of 1859) 268, 318.
,, (Act IX of 1871) 40.
Money Decree 1, 4.
Partnership 6.
Res Judicata 56.
Small Cause Court 17.
Special Appeal 30.
Voluntary Payment 2.
Written Statement 2.
Zur-i-peshgee Lease 37.

Suit on Document.

1. A plaintiff who sues upon a written document as the basis of his suit and adduces witnesses in support of that document, is bound by his allegation, and must stand or fall by the proof or failure of the document.—1 Hay 112 (Marshall 47). *See* 12 W. R. 404, (F. B.) 21 W. R. 208.

2. A suit based on a particular document (*e.g.* for rent due under a kuboolcut) must be dismissed on failure to prove that document, notwithstanding defendant's admission of a certain liability independent of that document (as of his holding *mokurruree* jummas under the plaintiff). 1 Hay 130 (Marshall 57), 1 W. R. 305. *See* (F. B.) 21 W. R. 208.

3. A plaintiff who sued for arrears of rent on a kuboolcut which was found to be false, was not allowed to recover anything on a *mourosee* pottah pleaded by the defendant. —2 Hay 106 (Marshall 263). *See also* 2 Hay 666 (Marshall 561). *See* (F. B.) 21 W. R., 208.

3. A plaintiff who sues upon title-deeds as evidence of his claim, is bound to file them with his plaint or to produce them at first hearing, or else to show good cause for not having done so.—11 W. R. 95.

See Deed 2.
Forgery 2.
Lakheraj 3.
Lost Document 1.
Purdah-women 1.
Rent 97.

Summary Appeal.

See Miscellaneous Appeal 1.

Summary Award for Rent.

1. In a suit for arrears of rent, a — against the defendant for subsequent years is no evidence of such rent being due; but such a decree is *primâ facie* evidence of rent payable in subsequent years.—2 Hay 664 (Marshall 558). *See also* W. R. Sp. (Act X) 107 (3 R. J. P. J. 85).

1*a*. A speculative purchaser of a — under cls. 1, 2, and 3 s. 18 Reg. VIII of 1819 can only execute the decree, but cannot bring a regular suit under cl. 4 to proceed against the real property of the judgment-debtor.—2 Hay 672.

2. Plaintiff's title may be determined in a suit to set aside a — and to award arrears of rent due under a kuboolcut.—1 R. J. P. J. 215 (Sev. 742*a*).

3. The remedy under s. 109 Act X of 1859 applies to decrees joined under that law itself and not to those gained summarily under former laws; and although s. 109 has been repealed, the right to sue in order to give effect to summary decrees gained previous to its abolition, was held to remain to the plaintiff in this case who had no remedy under Act X of 1859.—Sev. 80.

4. A suit not to contest the justice of a —, but to have it declared null and void as made wholly without jurisdiction, is not barred by s. 6 Reg. VIII of 1831.—Sev. 97.

5. A — fixes nothing in perpetuity, and can be no bar to any person, whether the original proprietor or the auction-purchaser, who, as a zemindar, has an inherent right to make new assessments, or to vary the terms of his rents when such are not fixed in perpetuity by decree or otherwise.—Sev. 579.

6. A — does not determine the question as to the right and title of the zemindar to enhance.—1 W. R. 276 (3 R. J. P. J. 333).

7. Where a summary suit for rent under Reg. VII of 1799 was commenced before the passing of Act X of 1859, the unsuccessful party was not, by reason of the decision in that suit having been given after that Act came into operation, deprived of his right, under s. 4 Reg. VIII of 1831, to contest the justice of the summary decision by a regular suit, ss. 151 and 160 Act X being confined to decisions under that Act.—(F. B.) 7 W. R. 185 (*over-ruling* 2 W. R. (Act X) 27).

See Cause of Action 9.
Court of Wards 11.
Enhancement 119.
High Court 59.
Jurisdiction 11.
Limitation 123.
,, (Act XIV of 1859) 295.
Money-Decree 10.
Practice (Parties) 1.
Rent 4.

Summary Order.

A Civil Court cannot pass a — declaring invalid a sale of a house by a manager as beyond the scope of s. 18 Act XL of 1858, and granting an injunction to prevent the demolition of such house, but should leave the title of the parties to be established in a regular suit.—17 W. R. 171.

See Appeal 194, 203.
Certificate 36.
Court Fees 12.
Limitation 1, 2, 3.
,, (Act XIV of 1859) 8, 9, 84, 178, 241, 242, 289.
Onus Probandi 76.
Practice (Execution of Decree) 28, 182.
Summary Award for Rent.

Summary Trial.

1. In a — under s. 222 Act X of 1872 it must clearly appear on the face of the conviction that the case was dealt with as one of those which come under the purview of that section.—20 W. R., Cr., 17; 22 W. R., Cr., 28, 29; 23 W. R., Cr., 3; 24 W. R., Cr., 21, 71. *See* 23 W. R. 19.

It is not in the power of a Magistrate to reduce an offence so as to make it the subject of a —.—24 W. R., Cr., 48.

2. Where the charge was originally one of dacoity under s. 395 Penal Code, but during the progress of the case the charge under that section was lost sight of and the accused were put on their defence on a charge of being members of an unlawful assembly under s. 143,—*Held* that, had the complaint been one under s. 143 and not under s. 395, it might have been made the subject of a — under s. 222 Act X of 1872.—21 W. R., Cr., 89.

3. Where an accused was charged with theft of a box containing 50Rs. in cash and of the box worth 8 annas 6 pies, the Magistrate considered the box to be of no value and struck out the 8 annas 6 pies, and therefore dealt with the case as a — under s. 222 Act X of 1872. *Held* that the Magistrate was not at liberty, upon his own authority and without taking evidence, to throw the box entirely out of consideration, as upon that depended his jurisdiction to dispose of the case summarily.—22 W. R., Cr., 65.

SUMMARY TRIAL (*continued*).

4. Where the accused was, in addition to a fine, sentenced to lose the opium found in his possession, this punishment of confiscation was held to be separate and distinct from that of fine or imprisonment, and the offence to be not one which a Magistrate could try summarily.—23 W. R., Cr., 33.

So also in a case of confiscation of salt.—22 W. R., Cr., 43.

5. A charge of mischief, even if combined with one of theft, is triable summarily under s. 222 Act X of 1872.—25 W. R., Cr., 5.

But see (as to a case of Mischief) 25 W. R., Cr., 69.

6. Under s. 228 Act X of 1872, the Magistrates are not bound to recover the substance of every separate deposition, but to state generally what is the substance of the witnesses' evidence.—25 W. R., Cr., 6.

7. Whether a case is triable summarily or not (with reference to the value of the property concerned) must be determined by the complaint and not by any estimate formed by the Magistrate after evidence has been recorded. —25 W. R., Cr., 19.

8. S. 227 Act X of 1872 is intended to apply only to short and simple cases in which but little evidence is needed.—25 W. R., Cr., 65.

9. A *bonâ fide* claim of right deprives a Magistrate of jurisdiction to deal with a criminal charge in a summary way.—*Ib.*

10. Where the Magistrate himself was the prosecutor, and himself dealt penally with the case,—*Held* that this was not a case in which he ought to have acted summarily. —25 W. R., Cr., 69.

See Maintenance 41.
Toll 2.

Summons.

1. According to s. 1 Act VIII of 1859, every — for the defendant's appearance should state whether it is for the settlement of issues only, or for the final disposal of the suit.—2 Hay 251 (Marshall 307).

2. The — which issues under Act VIII of 1859 to command the attendance of witnesses is the act or order of the Court, served by an officer of the Court, and not a mere precept obtainable as of course by the party, like an English *subpœna*.—Sev. 536.

3. The witnesses present at the service of a — are the best, and not secondary evidence of the service of —.— W. R. Sp. 33.

4. Failure to prove service of — on defendant who did not appear is no reason for dismissing the suit as against defendant who appeared and admitted plaintiff's claim.—*Ib.*

5. A — to a party to produce documents must be a written — describing the nature of the documents.— W. R. Sp. 164.

6. A complainant's deposition must show some grounds for proceeding before a Magistrate can legally issue a —. W. R. Sp., Cr., 33.

7. A Deputy Magistrate was held to have been wrong in summoning the parties charged before examining the complainant.—W. R. Sp., Cr., 37.

8. A Mofussil Judge stated in his return to the Sheriff of Calcutta that substituted service had been effected by affixing a copy of the — to the "house" of the defendant. *Held* that the return was insufficient, and that the word "dwelling-house" must be expressly mentioned, according to s. 55 Act VIII.—1 Hyde 132.

There is no proper service under that section unless the — is affixed to defendant's "dwelling-house" after he could not be found.—21 W. R. 242.

9. Act VIII confers no authority upon a Judge to issue — to a witness to attend on the settlement of issues.— 1 Hyde 147.

10. For the purpose of — under s. 63 Act VIII a railway company must be deemed to dwell at its principal office.— 1 Hyde 197.

11. Under s. 149 Act VIII a party is entitled to obtain — for witnesses at any time before the case is tried.— 5 W. R. 111, 9 W. R. 489.

Unless it appears that the witnesses cannot attend before that party's case closes.—9 W. R. 530.

But it is still in the discretion of the Court to adjourn the case.—24 W. R. 290.

12. Where all the means for service of — contemplated by s. 55 Act VIII have failed, application should be made to the Court under s. 57.—6 W. R. 13.

13. A — on a witness should not be affixed on his residence; the proper course is prescribed in s. 156 Act VIII. —6 W. R. 126.

14. In the case of a charge of an offence triable by the Court of Session alone, the Magistrate is bound to summon the complainant's witnesses.—8 W. R., Cr., 4.

15. A — cannot be sent by post to any place to which letters are not registered by a Post Office in India, with reference to ss. 65 and 66 Act VIII.—10 W. R. 349.

16. The circumstance of an offence having come to the knowledge of the Magistrate, whether through a petition presented or otherwise, is quite sufficient to justify the Magistrate in issuing a — under s. 68 Act XXV of 1861.— 11 W. R., Cr., 1.

17. In a case tried under Chap. XIV Act XXV of 1861 a Magistrate is bound, under s. 253, to — the witnesses for the defence.—11 W. R., Cr., 55; 14 W. R., Cr., 81; 15 W. R., Cr., 15, 34. *See also* 23 W. R., Cr., 56. *But see* 16 W. R., Cr., 28.

18. Where there is no return of service to a —, the Court has full discretion to issue a second —. The party interested must move the Court to do what is necessary.— 14 W. R. 336.

19. — how to be served on a respondent living in foreign territory.—15 W. R. 31.

20. Persons merely looking after the affairs of a defendant are not *agents* on whom service of — will be sufficient under s. 49 Act VIII.—17 W. R. 33.

21. *Quære.* Whether where, either under s. 119 Act VIII or in the exercise of the power of review, a suit is restored to its original position, the plaintiff is bound to obtain and issue fresh —.—20 W. R. 2.

See Accused 10, 11.
Arms 1.
Error 2.
Evidence (Documentary) 86.
Ex-parte Judgment or Decree 22, 32, 34, 36.
Irregularity 21.
Land Dispute 44.
Onus Probandi 275.
Partnership 5.
Practice (Appeal) 69, 87, 91.
„ (Criminal Trials) 42.
„ (Parties) 6, 10, 11, 13, 15, 40.
„ (Suit) 2.
Re-hearing 1*a*.
Security 17, 20.
Service 4, 5.
Witness 39, 40, 49, 50, 52, 58, 61, 86, 87, 88.

Sunday.

1. Magistrates should not take up judicial work on —.— W. R., Sp., Cr., 2 (2 R. J. P. J. 37).

2. The Lord's Day Act (29 Car. II) does not extend to criminal cases in British Burmah, and consequently a conviction there is not bad by reason of the accused having been arrested on a —.—10 W. R. 350.

See Carrier 2.
Limitation (Act XIV of 1859) 77.
Local Investigation 1.
Practice (Appeal) 49.
Vacations 1.

Supplemental Suit.

See Jurisdiction 409.

Supreme Court.

1. A decree of the late — must be treated as a decree of the High Court, and as such subject to the provisions of Act VIII of 1859 (in this case s. 278) except so far as the application of any provision of that Act would deprive a party of any right or privilege under the old procedure.—2 Hyde 215.

2. The mere pendency of a suit in the — will not bar the prosecution of a suit in a Zillah Court intended to be simply in furtherance of and supplemental to the suit in the —.—(P. C.) 5 W. R., P. C., 83 (P. C. R. 635).

See Executor 2.
High Court 11, 176.
Husband and Wife 5.
Jurisdiction 65, 125.
Mortgage 54, 94, 172, 237.
Privy Council 59.
Sheriff.
Zemindar 1, 2.

Surburakaree Tenure.

A — in Cuttack is not alienable without the consent of the zemindar.—1 W. R. 322.

See Auction-Purchaser (Execution Sale) 32.
Enhancement 261.

Surety.

See Principal and Surety.

Surinjamee.

See Mesne Profits 9, 12, 71.
Mortgage 107.
Set-off 22.

Surkhut.

See Kuboolent 65.

Surprise.

See Appellate Court 17.
Evidence (Oral) 8.

Surrender.

See Hindoo Widow 6.
Landlord and Tenant 23.
Lease 56.
Registration 44.
Relinquishment.
Resignation.
Specific Performance 2.
Sub-lease 6.

Survey.

1. In a suit to set aside the effect of certain — proceedings.—*Held* that those proceedings of themselves, as only supported by oral testimony, should not have been relied upon as evidence sufficient to justify a decree in favor of defendants, and that in such a case as this oral testimony alone would not be sufficient to prove defendant's title.—Sev. 749.

2. A lessee under the Court of Wards can under s. 9 Act VI of 1862 (B. C.) make a general — of the lands comprised in his lease.—W. R. Sp. (Act X) 105 (3 R. J. P. J. 81).

3. A — Court's demarcation of certain land to one party in Dacca on the ground of possession, cannot over-ride the decree of a competent Court assigning the right and title of the land to another party in Backergunge. Adverse possession to benefit the former should have been pleaded before that decree was made.—1 W. R. 329. *See* 7 W. R. 200.

4. A — award cannot legally be given for more than is claimed, and is not binding for the excess.—7 W. R. 383.

5. An official opinion of the Superintendent of — regarding the trustworthiness of the — proceedings is not legal evidence. The — proceedings are not conclusive as to title. Where they record a legal award of a competent Court, possession under it should not ordinarily be disturbed, unless a superior title be shown by the opposite party.—*Ib.* *See* 12 W. R. 150, *Ib.* (P. C.) 6, 13 W. R., P. C., 7.

6. Representatives of a party to a — award are entitled to the benefits of the award.—1 W. R. 344.

7. A — map is not sufficient, in the absence of other satisfactory proof of title, or of long antecedent possession, to establish a plaintiff's right to the land, and to disturb the defendant's present possession.—2 W. R. 210. *See* 10 W. R. 343. *But see* 13 W. R. 50, 19 W. R. 202.

8. A — award sought to be set aside, cannot be treated as evidence.—2 W. R. 278.

9. A co-proprietor of a joint undivided estate is bound by a — award and compromise to which the other joint proprietors were parties, where notice of the — proceedings was served on the proprietors and not on him individually.—3 W. R. 7.

10. S. 9 Reg. IX of 1833 refers only to decisions of *punchayets*, but does not bar a suit in the Civil Court to set aside an award of the — authorities as null and void.—4 W. R. 79.

11. A — map sought to be set aside may be used for the purpose of testing the correctness of an Ameen's report.—5 W. R. 33.

12. The mere fact of a — award without proof of possession is not conclusive against all other testimony.—5 W. R. 220.

13. A purchaser is bound by a — award passed against the persons from whom he derived his title.—5 W. R. 242.

14. A person in possession may sue to set aside a — map.—6 W. R. 267.

15. A — map is not conclusive evidence of possession.—*Ib.* *But see* 10 W. R. 343.

16. What constitutes a — award.—6 W. R. 317, 11 W. R. 389.

17. It was not the intention of the Full Bench ruling (7 W. R. 338) to lay down that *thakbust* maps or other similar surveys should or should not be evidence against persons who were not parties to them.—8 W. R. 64.

18. Certified copies of — measurement chittas, field books, and maps are admissible in evidence.—8 W. R. 167.

19. A private partition of a joint estate is not inconsistent with subsequent — proceedings and does not take away their legal effect.—10 W. R. 336.

20. To make a — demarcation effective, it is not necessary that there should be any more special sanction by the Collector than a general acceptance of the — proceedings as correct.—*Ib.*

21. The fact of a previous suit to set aside a — award being dismissed, does not make the — map conclusive evidence.—11 W. R. 46.

22. A Court is wrong in relying upon any recital in a *muntokhub khusrah* which is contrary to an entry in the original *khusrah* itself.—11 W. R. 159.

23. Where plaintiff was present at — proceedings which were his own act, he cannot sue for amendment of a *thak* demarcation; and this objection on the part of defendant ought to be admitted even in special appeal.—12 W. R. 24.

24. A *thakbust* is admissible in evidence.—12 W. R. 90, 25 W. R. 54. *See* 16 W. R. 4.

25. The order of a Deputy Collector in the — Department, striking a case off his file owing to plaintiff's omission to deposit the Ameen's fees, is no award.—12 W. R. 174.

26. An award by the Superintendent of — is not conclusive evidence of a contested right in a regular suit.—12 W. R. 180.

27. Where a copy of a schedule map had been relied upon and admitted on previous occasions by both the parties to a suit,—*Held* that plaintiff could not sue for a fresh measurement and demarcation, and that the Judge was wrong in not considering the copy binding on defendants.—18 W. R. 346.

28. A — map may be used as evidence in connection with the *thak* map.—20 W. R. 14.

SURVEY (*continued*).

29. Where a — is once concluded, the map completed, and the *thakbust* proceedings brought to a close, a Deputy Collector has no authority to re-open the proceedings; and if he does so on the application of one party and issues a notice to the opposite party, the latter is not bound to appear.—21 W. R. 79.

30. A — map is a piece of evidence like other evidence in a case, and can be of no effect in determining the burden of proof.—22 W. R. 296.

And its accuracy must be presumed under s. 83 Act I of 1872.—22 W. R. 519.

Meaning of "accurate" in the same section.—25 W. R. 179.

31. A — award is evidence *quantum valeat* between the parties of the fact of possession.—23 W. R. 27.

32. *Thakbust* maps, where they are evidence of possession, are also some evidence of title, although not conclusive.—25 W. R. 36. *See* 25 W. R. 453.

33. A *thakbust* map is not intended to represent, and is in no sense a record of, tenures subordinate to revenue-paying estates, and is of no value as evidence in a suit to determine the extent of the interest of a *shikmee* talookdar.—25 W. R. 277.

34. *Compass* map generally means the Revenue Surveyor's map.—25 W. R. 521.

See Boundary 13, 18, 19.
Churs 46, 68.
Co-sharers 10.
Costs 6.
Declaratory Decree 12*a*, 20, 41.
Evidence (Documentary) 69, 70, 109.
,, (Estoppel) 75.
Ghatwals 11.
Joinder of Causes of Action 3.
Julkur 1.
Jurisdiction 36, 91, 158.
Limitation 116, 126, 166.
,, (Act XIII of 1848) 6, 7, 10, 11, 16, 17, 18, 19, 21.
,, (Act XIV of 1859) 212, 213, 214, 217.
Possessory Award 4.

Survivorship.

See Evidence (Estoppel) 57.
Hindoo Law (Coparcenary) 22*a*.
,, ,, (Inheritance and Succession) 37, 38, 103, 110.
,, Widow 32, 75, 116.
Ikrarnamah 1.
Partition 4.
Practice (Execution of Decree) 101, 122.
,, (Parties) 21.
Principal and Agent 37.
Will 5.

Suttee.

1. Persons present and abetting a boy to set fire to the pile upon which a widow voluntarily burnt herself were guilty themselves of culpable homicide. One who took no active part in causing the death, but induced the widow to return to the pile, was guilty of abetment of suicide.—1 R. J. P. J. 174.

2. The conviction of certain persons as abettors of culpable homicide in having looked on passively at a — was upheld on appeal.—1 R. J. P. J. 246.

Sylhet.

See Pre-emption 4, 31, 46.

Talook.

1. The only possession that a zemindar can obtain, after a decree for resumption of the lands in the possession of a defendant talookdar, is a constructive one derived from the receipt of rent; nor can he sue for an injunction to prevent the talookdar from committing waste.—W. R. Sp. 275 (L. R. 59). *See* 23 W. R. 298.

2. Where the zemindaree rights in a property have been purchased by Government at a sale for arrears of revenue and sold again, certain talookdars therein being granted their rights and position, the second purchaser is bound by the acts of Government, and the talookdars, if dispossessed, may recover possession under cl. 6 s. 23 Act X; but the purchaser may sue for enhanced rents under cl. 1.—3 W. R. (Act X) 127. *See also* 8 W. R. 222, 2 W. R. (Act X) 81 (*affirmed by P. C.*) 13 W. R., P. C. 24.

3. Dependent talookdars. — *See* Auction-Purchaser (Revenue Sale) 14, 23; Ejectment 48, 75; Enhancement 91, 115, 128, 130, 135, 140, 238, 256; Onus Probandi 250; Under Tenures 1.

4. Where the word — occurs without any sort of qualification and restriction, it refers *primâ facie* to a hereditary interest.—18 W. R. 489.

And so where the same word occurs in a *chittah*, the presumption is that it implies a permanent interest.—22 W. R. 326.

See Abatement 2, 3, 25.
Auction-Purchaser (Revenue Sale) 14, 23.
Boundary 11.
Churs 43, 48, 49.
Contribution 33.
Co-sharers 36, 59, 60.
Ejectment 66, 75.
Enhancement 42, 54, 91, 110, 115, 140, 180, 209, 210, 211, 232, 238, 239, 256, 270, 277.
Evidence (Estoppel) 71.
Land taken for Public Purposes 26.
Limitation 121, 144.
,, (Act X of 1859) 28.
Measurement 11.
Mokurrurec Tenure 32.
Onus Probandi 20, 78, 202, 250.
Ousut Talook.
Practice (Possession) 55, 62.
Registration 10.
Rent 57, 101.
Re-sale 3.
Resumption 13, 27.
Settlement 10, 21.
Shikmee.
Sub-talook.
Title-deeds 1.
Under Tenures.
Vendor and Purchaser 51.

Tanjore.

The seizure by the British Government of the — Raj was an act of State over which a Municipal Court has no jurisdiction.—(P. C.) 4 W. R., P. C., 42 (P. C. R. 373).

Tank.

See Enhancement 24.
Evidence (Presumptions) 21.
Hindoo Widow 113.
Julkur 11.
Jurisdiction 138.
Lakheraj 21, 22.
Lease 54, 66, 76.
Limitation 210.

TANK (*continued*).

See Municipal 15, 21.
Negligence 3.
Nuisance 9.
Occupancy 88, 93.
Onus Probandi 162, 196.
Partition 4*a*.
Prescription 12.
Putnee Talook 88.
Rent 51.
Resumption 18.
Right of Way 31.
Transferable Tenure 10.
Water 18.
Zur-i-peshgee Lease 10.

Tea Garden.

See Partnership 23, 29.

Tehseeldar.

See Arbitration 34.
Cesses 8.
Jurisdiction 295, 382.
Limitation 282.
Principal and Agent 16*a*, 39.
Rent 77.

Telegraph.

See Practice (Attachment) 52.

Temple.

Declaratory Decree 2.
Limitation 98.

Tenant.

1. Tenant-at-will.—*See* Churs 21; Ejectment 66*a*, 95*a*, 105; Enhancement 147, 163, 164; Kubooleut 32; Landlord and Tenant 45; Practice (Possession) 35, 90; Rent 34.
2. Tenant holding-over.—*See* Ejectment 4*a*, 62, 93, 112; Landlord and Tenant 9, 12, 14, 15, 17, 35, 38.
3. Tenant-in-common.—*See* Co-sharers 37.
4. Tenant year-by-year.—*See* Landlord and Tenant 17, 30; Occupancy 106.

See Churs 7, 19, 21, 22.
Joint Tenants.
Landlord and Tenant.
Registration 62.

Tender.

1. A — not followed by a deposit or payment into Court, is not forbidden by Act VI of 1862 (B. C.).—2 W. R. (Act X) 88 (4 R. J. P. J. 201).
2. A — followed by a deposit in Court under Act VI of 1862 (B. C.) is legal and sufficient.—10 W. R. 101.
3. A — of rent not made at the proper place, or to a person authorized either by law or by the landlord to receive the money, is not sufficient.—16 W. R. 79.

See Kubooleut 4, 16, 21, 26, 37.
Landlord and Tenant 11.
Mortgage 1, 18, 27, 40, 56, 86, 134, 139, 157, 157*a*, 174, 250, 276.
Onus Probandi 116.
Pardon.
Pottah 20.

See Pre-emption 18.
" Putnee Talook 94.
Rent 85.
Sale 10, 109, 228.
„ Law (Act XI of 1859) 28.
„ „ (Act VII of 1868, B. C.) 1.
Time 27.
Vendor and Purchaser 4, 67.

Theft.

1. Though no amends can be granted to the accused under s. 270 Act XXV of 1861 for a frivolous charge of —, yet a fine may be inflicted on the accuser.—1 W. R., Cr., 1. *See also* 2 W. R., Cr., 57 (4 R. J. P. J. 366), 3 W. R., Cr., 70; 6 W. R., Cr., 54; 7 W. R., Cr., 12, 40.
So also under s. 209 Act X of 1872.—23 W. R. 17.
2. The subsequent making away with property by a person originally in lawful possession of the same is not — but criminal breach of trust.—1 W. R., Cr., 2.
3. — by policemen of money shut up in a box and placed in the Police Treasury buildings over which they were placed in charge, is punishable under s. 381 Penal Code, and not s. 409.—2 W. R., Cr., 55 (4 R. J. P. J. 362), 3 W. R., Cr., 29.
4. What constitutes — as defined in the Penal Code.—3 W. R., Cr., 2 (4 R. J. P. J. 417); 5 W. R., Cr., 68; 16 W. R., Cr., 18; 20 W. R., Cr., 80.
5. It is not — if a person, acting *bonâ fide* in the interests of his employers and finding a party of fishermen poaching on his master's fisheries, seized the nets and retained possession of them pending his master's orders.—6 W. R., Cr., 79.
6. A person acting under a claim of right (however ill founded) is not guilty of — by asserting it.—7 W. R., Cr., 57.
7. — by a hired boatman on board a boat comes under s. 380 Penal Code.—8 W. R., Cr., 32.
8. Where a number of persons come and forcibly carry off crops, they are, with reference to s. 114 Penal Code, all guilty of — under s. 378 even though any of them took no part in the actual taking.—8 W. R., Cr., 59.
9. A person who consented to form one of a party who committed —, and resiled from his agreement, but was present at the —, does not come within cl. 2 s. 107 Penal Code, and ought not to have been convicted of the — but of the abetment thereof under cl. 3 s. 107 and s. 109.—8 W. R., Cr., 78.
10. Where the accused stole property at night belonging to two different persons from the same room, it was held that he could not be sentenced separately as for *two* offences of —.—11 W. R., Cr., 38.
11. S. 378 Penal Code does not include, under the offence of —, the case of one co-sharer taking into his sole possession property belonging to and in the joint possession of himself and his co-sharers.—15 W. R., Cr., 51.
12. On a conviction for — under s. 380 Penal Code, fine cannot be substituted for, though it may be added to, imprisonment.—16 W. R., Cr., 17.
13. A boat is moveable property under s. 378 Penal Code and may be the subject of —.—16 W. R., Cr., 63.
14. What constitutes abetment of — as defined in the Penal Code.—18 W. R., Cr., 8.
15. The taking of fish in that portion of a navigable river over which a right of julkur exists in another person, does not fall within s. 378 Penal Code.—19 W. R., Cr., 47; 20 W. R., Cr., 15.
16. The illegal seizure and impounding of cattle is not —.—24 W. R., Cr., 7.
17. All that is necessary to constitute the offence of — in a building under s. 380 Penal Code, is that the property should be under the protection of the building, and not that the prisoner entered the building unlawfully.—24 W. R., Cr., 49.

See Amends 8.
Charge 1.
Cumulative Sentences 2, 3.
Dismissal of Complaint 13.
Housebreaking by Night 2.

THEFT (*continued*).

See False Charge 5, 7.
Jurisdiction 480.
Jury 7.
Police 2.
Recognizance 21.
Security 5.
Splitting 1.
Stolen Property 1, 2, 11.
Summary Trial 3, 5.
Whipping 2, 10.
Wrongful Restraint 2.

Ticcadar.

See Occupancy 107.
Sale 229.

Timber.

1. Where *tainzas* or Revenue certificates have been granted by the Conservator of Forests to the owners of —, such — cannot be parted with to third parties except subject to that lien, although the *tainzas* were unindorsed. —5 W. R. 189.

The holding of the *tainzas* does not give possession of the —; and where the parties in a contract use the word "received," the word must be taken to mean having obtained possession and not merely having entered and got *tainzas*.—17 W. R. 120.

2. — claimed by a landlord as washed on to his estate by a river is not unclaimed property within the meaning of s. 25 *et seq.* Act V of 1861.—9 W. R. 97.

3. A suit for damages for value of — carried away by Government after being washed on to plaintiff's estate, and for declaration of plaintiff's right as against Government to all — in future washed on to his estate, is not cognizable by a Small Cause Court; and it is not necessary for plaintiff to produce documentary evidence in support of the right, or some decree or decision of competent authority establishing the custom.—*Ib.*

4. The right of cutting —, conferred by a lease which commenced from a certain date, was not allowed to be controlled by a custom according to which the cutting of the — did not begin until another month.—19 W. R. 225.

5. Where a party uses land for stacking — on it, knowing the customary terms on which such use is permitted, he is bound to pay according to the custom.—21 W. R. 124.

6. Where — had been cut and sold by a person who had no authority to do so, and was confiscated by Government under Act VII of 1865, the Government was held justly liable for the expense of conveying the — from the place where it was lying, but not equitably chargeable with the expense of cutting the — which was a wrongful act.— 21 W. R. 435.

See Jurisdiction 458.
Lease 50.
Limitation 280.
Onus Probandi 140.
Registration 83.
Trees 2.

Time.

1. — for taking plea of jurisdiction.—*See* Bill of Lading 5; Costs 58, 83; Evidence (Estoppel) 129; Jurisdiction 15, 341, 344, 432, 482.

2. — for representatives of deceased plaintiff or appellant to apply for the entry of their names in the register.— 1 Hay 144.

2*a*. — for appealing.—*See* Practice (Appeal) 30, 39, 40, 41, 57, 60, 62, 67, 93. *See* 20 *post.*

3. — for rejecting an appeal.—W. R. Sp. 134, 8 W. R. 141, 13 W. R. 245.

4. In computing the — required for obtaining a copy of the decree appealed against and excluded from the — allowed for the presentation of an appeal, the day on which the stamp paper was deposited, and the day on which the copy was supplied, must each be counted.—W. R. Sp. 145; 5 W. R., Mis., 44; 6 W. R., Mis., 106. *See* 9, 38 *post*, and 13 W. R. 245. *But see* 21 W. R. 308, (*affirmed by F. B.*) 24 W. R. 105.

5. — for pleading or raising the point of limitation.—*See* Jurisdiction 389; Limitation 9, 20, 30, 31, 33, 37, 56, 57, 115, 119, 122, 135, 155, 163, 197; Limitation (Execution of Decree) 2; Practice (Execution of Decree) 188.

6. — for bringing a suit under s. 246 Act VIII of 1859.— *See* Attached Property 4; Limitation 125*a*, 148, 150, 187, 226, 235.

7. Vacations are not periods to be added to the — for appealing, but only periods during which non-presentation of appeals is excused.—W. R. Sp., Mis., 13, 40; 3 W. R., S. C. C. (*foot-note*) 6 (S. C. C., *foot-note*, 133); 20 W. R. 167. *See also* (*as to Revenue Courts*) 11 W. R. 537, 16 W. R. 230. *But see* Limitation (Act XIV of 1859) 77; Limitation (Act IX of 1871) 24; and Vacations 1.

8. — for liquidation of a claim after attachment need not be limited to two years, but may be further extended at the discretion of the Court.—1 W. R., Mis., 16.

9. The — requisite for obtaining a copy of the judgment as well as of the decree appealed against, should be excluded from the reckoning of the period for appeal.—2 W. R., Mis., 38. *See* 4 *ante, and* 38 *post. But see* 21 W. R. 308, (*affirmed by F. B.*) 24 W. R. 105.

Not so as to reviews.—17 W. R. 230.

10. — for filing documents.—*See* Evidence (Documentary) 12; Practice (Suit) 19, 53.

11. — for pleading want of notice of action.—*See* Notice 19.
" " " to quit.—*See* Notice 29.

12. — for pleading informality or insufficiency or non-service of notice of enhancement.—*See* Enhancement 214; Special Appeal 102.

13. — for objecting to admissibility or relevancy of evidence.—*See* Special Appeal 78.
" sufficiency or weight of evidence. —*See* Special Appeal 15, 22.

14. — for pleading want of cause of action.—*See* Special Appeal 86.

15. — for applications under s. 230 Act VIII.—*See* Limitation 175.

16. — for pleading non-registration.—*See* Registration 72.
— for pleading registration.—*See* Practice (Review) 95.

17. — for objecting to reception of secondary evidence. —*See* Evidence 70.

18. — for objecting to document as not properly stamped. —*See* Stamp Duty 4.

19. — for setting up an equitable right or defence.—*See* Practice (Execution of Decree) 158; Practice (Suit) 25.

20. — for appealing under s. 15 of the Charter.—*See* High Court 74.

21 — to be reckoned according to English Calendar.— *See* Limitation 214; Limitation (Act XIV of 1859) 259.

22. — for pleading under-valuation of suit.—*See* Special Appeal 75, 97*a*, 98; Value of Suit or Appeal 10, 11, 12.

23. — for urging objections under s. 348 Act VIII.—*See* Objection (under s. 348 Act VIII of 1859) 11, 16, 18.

24. — for framing issues.—*See* Issues 2.

25. — for objecting to insufficiency of issues.—*See* Special Appeal 163.

26. — for questioning right of agent to sue.—*See* Special Appeal 108.

27. — for raising issues as to whether pottah was tendered or not.—15 W. R. 410.

28. — for receiving evidence as to character.—*See* Practice (Criminal Trials) 13, 23.

29. — for claiming pre-emption.—*See* Pre-emption 5, 13, 25, 27, 37, 52, 58, 67.

30. From what date to compute the period of limitation as to a promissory note.—*See* Limitation (Act XIV of 1859) 284.

And as to a bond where a day is specified.—*See* Limitation (Act IX of 1871) 34.

31. Date of suit.—*See* Limitation 24, 65, 147; Limitation (Act XIV of 1859) 77.

32. — for pleading informality.—*See* Absconding Offender 8. *See* 12 *ante* and 35 *post.*

Time (*continued*).

33. — for objecting to sale in execution.—*See* Sale 179.
34. — for pleading misjoinder.—*See* Special Appeal 84, 124.
35. — for pleading informality in recording evidence.—*See* Special Appeal 125.
36. — for pleading under-valuation of appeal.—*See* High Court 130; Special Appeal 3.
37. — for pleading defect of parties.—*See* Error 5; Special Appeal 127.
38. In calculating the — allowed for appeal by s. 333 Act VIII, the period between the date on which judgment was pronounced and that on which the decree was signed, was allowed to be deducted.—18 W. R. 512. *See* 4, 9 *ante*. *But see* 21 W. R. 308. (*affirmed by F. B.*) 24 W. R. 105.
39. From what date to compute the period of limitation generally.—*See* Limitation (Act XIV of 1859) 305.
40. — for objecting to sufficiency of notice of execution.—*See* Sale 203.
41. — for objecting to *bona fides* of application for execution.—*See* Limitation (Execution of Decree) 13.
42. — for withdrawing suit with liberty to bring fresh suit.—*See* Fresh Suit 1*a*; Withdrawal of Suit or Appeal 9, 10, 12.
43. — for pleading *res judicata*.—*See* Special Appeal 146.
44. — for making an enquiry by an Ameen.—*See* Ameen 26.
45. — for making objections to report of Ameen.—*See* Ameen 6.
46. — for making objection on a point of law.—*See* Special Appeal 157.
47. — for the appointment of a successor by a Mutwalee.—*See* Endowment 48.

See Ameen 6.
Appeal 24, 37, 72, 95, 192.
Arbitration 22, 52, 54, 62, 73, 96.
Bond 16*a*.
Chota Nagpore 1.
Construction 180.
Criminal Proceedings 10.
Ejectment 13, 79, 87, 89, 92.
Error 5.
Hindoo Law (Coparcenary) 91.
,, ,, (Inheritance and Succession) 91.
,, Widow 88.
Hoondee 18.
Joint Decree 4.
Jurisdiction 26, 379.
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Kuboolcut 16, 51.
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,, (Act XIV of 1859) 292.
Lis Pendens 7.
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Mortgage 58, 101, 149, 156, 173, 244, 298.
Nuisance 11.
Plaint 24, 84.
Power of Attorney 1.
Practice (Appeal) 28, 30, 39, 40, 41, 57, 60, 62, 67, 93.
,, (Criminal Trials) 7, 66.
,, (Execution of Decree) 6*a*, 52, 109, 143, 206.
,, (Possession) 39.
,, (Review) 4, 8, 11, 21, 40, 51, 55, 61, 82, 90.
,, (Suit) 51.
Principal and Surety 8, 30, 38.
Privy Council 19, 21, 29, 32, 43, 56, 57, 65, 83.
Re-hearing 2, 4.
See Right of Way 9, 12, 13, 15, 16, 18, 22, 26.
,, Right to Light and Air 6.
Security 1.
Small Cause Court 29.
Special Appeal 8, 72, 76, 78, 81, 86, 104, 106, 114, 157.
Specific Performance 9.
Survey 23.
Time Bargain.
Tullabana 1, 3, 4.
Waste Land 4.
Whipping 9.
Written Statement 1, 8.

Time Bargain.

Failure to take delivery. Act XXI of 1848 —2 Hyde 121.

Tipperah.

1. Succession to the — Raj.—1 W. R. 177; 12 W. R. P. C., 21; 25 W. R. 404.
2. Marriage and legitimacy in —.—*See* Marriage 10.
3. Tipperah Rajah's Court.—*See* Res Judicata 37.
4. A Mokurruree pottah, granted by a Rajah of — to a member of his family, is, by recognized custom, resumable on the death of the grantor; and a female member does not cease to be a member by marrying into another race.—9 W. R. 308.

See High Court 79.
Pre-emption 26.

Title.

1. Proof of — necessary to turn another out of possession.—*See* Possession 1.
2. Jurisdiction of Small Cause Courts to try incidental questions of —.—(F. B.) W. R. F. B. 127 (S. C. C. 51; L. R. 30). *See also* 15 W. R. 166.
3. Where a declaratory suit was brought to establish plaintiff's title to a house which had been conveyed to a third party by a party who he alleged had no title to the same, and it appeared that the plaintiff had not been injured by the conveyance, it was held that the Lower Court was right in deciding against plaintiff's cause of action, but wrong in deciding against his —.—2 Hay 489.
4. In a suit to recover possession of certain lands resumed by Government and settled with the plaintiff, on the allegation that plaintiff had remained in possession until defendant dispossessed him, it was held that the plaintiff, having shown a good — (founded on the Settlement Officer's lease to him) accruing within 12 years of the date of his suit, could not be debarred from the benefit of it because he failed to prove his allegation of dispossession at some subsequent date.—Sev. 32.
5. A — once declared valid cannot be attacked on other grounds which were available when the former suit was under trial.—W. R. Sp. 313 (L. R. 91).
6. Where a suit for confirmation of — is dismissed for want of proof of —, the Court need not go into the question of possession.—W. R. Sp. 367 (L. R. 142).
7. A ryot cannot raise a direct issue as to the — of his Zemindar.—2 W. R. 45.
8. The — to large properties may be incidentally adjudicated upon in suits for small amounts.—2 W. R. 218.
9. The — of a lessor cannot be questioned by a tenant under an admitted lease.—4 R. J. P. J. 391.
10. A person suing to establish — to immoveable property, need not also sue to set aside a decree under s. 15 Act XIV of 1859; nor should his suit to establish — be dismissed because the boundaries in his plaint differ from those in the decree.—6 W. R. 268.
11. In a suit to establish —, evidence of plaintiff's possession prior to the summary award under s. 15 Act XIV under which he was dispossessed, may be good evidence of his —.—7 W. R. 89.

TITLE (*continued*).

12. Compliance with s. 224 Act VIII and a legal receipt for possession give a superior right, under a Civil Court's decree, to one founded on mere actual receipt of rent.—9 W. R. 358.

13. A plaintiff's cause of action is a very different thing from his —.—10 W. R. 426, 12 W. R. 55, 13 W. R. 343.

14. Where a Hindoo executes a conveyance when he has no — to the property, his subsequently becoming entitled to it as heir would not make the conveyance good.—(P. C.) 15 W. R., P. C., 12.

15. A mere general description of boundaries in a sale proclamation or a sale certificate does not of itself confer on the purchaser such a conclusive — as can be rebutted by no proof to the contrary.—17 W. R. 511.

16. The — of the purchaser of an estate settled by Government after resumption must depend upon the resumption decree, notwithstanding the opinion of a Deputy Collector to the contrary.—17 W. R. 557.

17. Although when parties do not possess a — prior to a particular date, they may fairly make it a condition that no — prior to that date shall be required, it is not fair or honest to say that the — commences on a certain date when it does not commence then, and when the vendor has prior deeds in his hands which show his — to be bad.—(O. J.) 18 W. R. 305.

18. Where there has been a clear dispute as to —, a suit for declaration of — is maintainable whether the plaintiffs have been disturbed or not in their possession.—20 W. R. 402.

19. Where the — upon which a plaintiff sues is put forward in the alternative, and the two parts of the alternative are not inconsistent with each other, he ought to obtain a decree if he makes out either branch of his alternative.—21 W. R. 12.

20. Where a plaintiff fails to prove a specific — which he sets up, but causes it to appear that he has had a clear *bonâ fide* possession from which the Court can infer a good —, the Court will not shut him out in consequence of the mere form of his plaint.—22 W. R. 390.

21. The — of a third party not before the Court cannot be adjudicated upon.—21 W. R. 19.

See Abatement 26.
Acquiescence 2.
Ameen 12, 20.
Appeal 28, 117, 128, 136.
Attached Property 8, 30, 31, 38, 43.
Auction-Purchaser (Execution Sale) 3, 8, 24.
,, ,, (Revenue Sale) 3.
Benamee 2, 2*a*, 26.
Bigh-Brito Tenure 1.
Boundary 5, 6, 12.
Building 6, 10.
Cause of Action 16, 17.
Certificate 5, 6, 10, 28, 103, 115, 118.
Churs 11, 47, 51, 54, 68, 83.
Compromise 19.
Co-sharers 31.
Costs 17.
Court Fees 20.
Criminal Trespass 1.
Declaratory Decree 3, 8, 15, 16, 25, 30*a*, 31, 34, 40, 44, 45, 47, 49, 50.
Decree 23.
Deed of Sale 1.
Ejectment 7, 8, 20, 21, 86.
Endowment 37, 66.
Escheat 3, 4.
Evidence 42.
,, (Admissions and Statements) 38.
,, (Documentary) 70.
,, (Estoppel) 18, 25, 32, 41, 55, 58, 62, 69, 75, 77, 79, 86, 91, 104, 111, 161, 183.
See Evidence (Oral) 29, 35, 39.
,, (Presumptions) 2, 25.
Ghatwals 3.
Hindoo Law (Coparcenary) 102.
,, Widow 22, 93.
Husband and Wife 42.
Injunction 2.
Intervenor 2, 5, 30, 37, 42, 55, 71, 74, 76.
Joinder of Parties 10, 32.
Julkur 1, 3, 17, 18.
Jurisdiction 137, 201, 203, 204, 216, 250, 261, 368, 406, 464, 467, 471, 473, 491.
Kubooleut 27, 52.
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,, Dispute 3, 6, 30, 48.
Landlord and Tenant 16, 34, 48.
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Lease 52.
Limitation 7, 13, 79*a*, 98, 108, 143, 160, 186, 222, 228, 251.
,, (Act X of 1859) 22, 25.
,, (Act XIV of 1859) 153, 154, 155, 157, 178, 186, 187, 188, 276, 294, 303.
Mesne Profits 41, 76.
Mokurraree Tenure 3, 7.
Mortgage 28, 279.
Notice 13.
Onus Probandi 26, 62, 86, 90, 111, 124, 131, 136, 137, 141, 142, 143, 157, 190, 206, 207, 208, 222, 237, 263, 278.
Partition (Butwarra) 28.
Plaint 33, 40.
Possession 1, 4, 5, 5*a*, 9, 11, 12, 12*a*, 16, 18, 19, 21, 25, 26, 27, 30, 33, 34, 35, 36.
Possessory Award 1, 2, 4.
Pottah 8, 31.
Practice (Amendment) 13.
,, (Appeal) 98.
,, (Attachment) 2.
,, (Execution of Decree) 54, 161, 216.
,, (Possession) 1, 6, 8, 15, 31, 38, 42, 42*a*, 43, 46, 52, 54, 59, 69, 70, 84, 85, 87.
,, (Suit) 37, 39, 41.
Prescription.
Principal and Agent 24, 29.
Putnee Talook 15.
Receipt 1.
Receiver 2.
Refund 4.
Registration 4, 9, 57, 135, 140.
Relinquishment 15.
Remand 18.
Rent 15, 20, 110, 113.
Res Judicata 32, 64, 86.
Reversioner 24.
Right of Property 3.
Right to sue 2.
Sale Law (Act I of 1845) 2.
Settlement 1.
Shikmee 2.
Special Appeal 38, 47, 110, 119, 120, 121, 134, 137, 142, 149.
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Title (*continued*).

See Survey 3, 5, 7, 32.
Title Deeds.
Vendor and Purchaser 2*a*, 13*a*, 34, 38, 44, 56, 61, 71, 72, 74.
Waste Land 8.
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Title Deeds.

Production of documents (and particularly — of talookdars) in the Courts of India attended with danger.—(P. C.) 3 W. R., P. C., 1 (P. C. R. 558).

See Bank of Bengal 2.
Benamee 21, 31.
Certificate 108.
Equitable Mortgage 1.
Evidence (Documentary) 127.
Hindoo Law (Coparcenary) 98.
Immoveable Property 3.
Land 7.
Limitation (Act XIV of 1859) 216.
Onus Probandi 84.
Possession 33.
Privy Council 62.
Suit on Document 4.
Title 17.
Vendor and Purchaser 37.

Toll.

1. To justify a conviction under s. 6 Act VIII of 1851 for illegal collection of a — on a public road, the road must be a public road within the meaning of s 2.—6 W. R., Cr., 48.

2. A charge of an illegal demand of — under s. 6 Act VIII of 1851 ought not to be dealt with summarily.—22 W. R., Cr., 76.

3. The power of levying — under the above Act is restricted to levying it at the toll-bar; the establishment of a — must be by some distinct resolution of the Government notified in some way or other by the Government.—*Ib.*

4. The word "extortionately" in s. 6 of the same Act is not used in the same sense as it is used in the Penal Code, but as meaning an unlawful demand of — accompanied by pressure, irrespectively of dishonesty.—*Ib.*

See Jurisdiction 127, 211, 318, 462.

Tora Guras Huk.

See Limitation (Act XIV of 1859) 315.
Onus Probandi 60.

Tort.

1. In the case of damage occasioned by wrongful act, the same remedy by action lies against the doer whether the act was his own spontaneous and unauthorized act or was done by the order of Government.—(P. C.) 2 W. R., P. C., 51 (P. C. R. 413).

2. Under s. 1 Act VIII of 1859 a civil action will lie for a — amounting to a felony (illegal detention of property) without the plaintiff being bound to institute a criminal proceeding in the first instance.—6 W. R., Cr., 9.

3. Abetment of —.—*See* Wrongs and Remedies 4.

4. Damnum absque injuriâ.—*See* Compromise 12.

See Building 8.
Damages 74, 88.
Encroachment.
Hindoo Law (Coparcenary) 58.
Indigo 15, 16.
Master and Servant 10.
Plaint 35.
Practice (Appeal) 59.
Representative 2.
Wrongs and Remedies.

Torture.

1. Where several persons were all concerned in a case of — and were prosecuting a common object, each was held guilty as a principal and not as an abettor of others.—7 W. R., Cr., 3.

2. Exposition of a Police Officer's power of arrest and detention of accused persons and witnesses, with a view to the suppression of the practice of —.—7 W. R., Cr., 3.

See Abetment 14.

Trade-mark.

1. An injunction will be granted to restrain a person from using a — or ticket which is clearly an imitation of that used by another, even though the person offending is not actuated by any fraudulent intention.—1 Hyde 270.

2. The ground upon which a person is restrained from using another's — is that he is gaining an advantage by the use of a particular — which is the property of another. It is not necessary to prove intentional fraud, or to show that persons have been actually deceived. It is sufficient if the Court be satisfied that the resemblance is such as would be likely to cause the one mark to be mistaken for the other.—2 Hyde 185.

Trader.

See Insolvency 4, 6.
Interest 75.
Limitation 192.
„ (Act XIV of 1859) 42, 197, 266, 268, 270.
Professions and Trades Tax.
Trade-mark.

Transfer.

1. Transfer of suit or appeal.—*See* Appeal 38; Arbitration 49; High Court 23, 24, 167; Jurisdiction 80, 189, 324, 336, 365, 476, 510; Libel 4; Limitation 106; Practice (Suit) 30, 45; Value of Suit or Appeal 15.

2. Transfer of Decree.—*See* Appeal 198; Certificate 61, 100; Jurisdiction 388, 390, 412, 415, 443, 470, 476, 506, 513; Limitation (Act IX of 1871) 4; Onus Probandi 130; Practice (Execution of Decree) 34, 56, 68, 70, 80, 92, 104, 123, 130, 144, 149, 172, 234, 237, 242, 243, 253.

3. Effect of — of non-transferable tenure.—7 W. R. 114, 15 W. R. 261, 16 W. R. 111, 20 W. R. 139.

4. Transfer of criminal case.—*See* High Court 115, 116; Practice (Criminal Trials) 24, 27, 29, 37, 55, 58, 63, 65; Registration 90.

5. Transfer of case for local enquiry.—*See* Remand 50.

6. Transfer of jurisdiction.—*See* Jurisdiction 425, 514.

See Appeal 208.
Auction-Purchaser (Execution Sale) 42.
„ „ (Revenue Sale) 20.
Building 7.
Champerty 13, 14.
Conveyance.
Deed of Sale 7.
Ejectment 1, 38, 42, 67, 74.
Endowment 60.
False Evidence 5.
Fraudulent Removal or Concealment.
Ghatwals 2.
Hindoo Law 1.
„ „ (Religious Ceremonies) 14.

TRANSFER (*continued*).

See Judge 4.
Jurisdiction 516.
Limitation 209.
" (Act XIV of 1859) 272.
Misjoinder 6.
Mortgage 212.
Occupancy 19, 28, 30, 54, 58, 59, 68, 84, 90, 97.
Principal and Surety 35.
Re-entry 4.
Registration 2, 3, 4, 8, 13, 14, 17, 37, 39, 46, 56, 68, 96, 131.
Rent 88.
Secret Transfer.
Securities (Government) 5.
Transferable Tenure.

Transferable Tenure.

1. It is not necessary that a tenure should be mokurruree in order to be transferable.—1 W. R. 5 (3 R. J. P. J. 127), 6 W. R. (Act X) 95.

2. Local custom may determine the transferable nature of a tenure with a right of occupancy.—4 W. R. 153 (3 R. J. P. J. 221); 3 W. R. (Act X) 2 (1 R. J. P. J. 385); 18 W. R. 55, 507.

3. The order of a Judge declaring that a tenure was not transferable nullifies the order of a Deputy Collector under s. 27 Act X requiring the transfer to be registered, even where the latter was not appealed from.—5 W. R. (Act X) 42.

4. A custom to prove the transferable nature of khoodkasht jotes need not be absolutely invariable.—6 W. R. 190. *See* 11 W. R. 354.

5. There is nothing unreasonable in the custom by which the tenure of a khoodkasht ryot, who has built a puccahouse on his land and has acquired a right of occupancy under s. 6 Act X, is a —.—7 W. R. 247. *See* 11 W. R. 354, 12 W. R. 495.

6. A yearly tenancy cannot be transferred without the lessor's consent, and its character is not changed by enjoyment under the pottah for many years.—8 W. R. 337. *See* 15 W. R. 152.

7. Credible evidence of the antiquity of a local custom is sufficient to determine whether tenures of a certain class are transferable by it.—11 W. R. 318.

8. According to the custom of the Hooghly district, a tenure granted for building purposes is transferable.—11 W. R. 354, 12 W. R. 495. *See also* 15 W. R. 275.

9. *Quære.* Whether a transfer of a *ryotwaree* tenure can be effected without the consent of the zemindar or talookdar, as the case might be, the immediate successor in estate.—(P. C.) 13 W. R., P. C., 18.

10. Applying the maxim *optimus interpres rerum usus*, it may be shown by evidence as to the nature of the enjoyment of any immoveable property, what the grant in its origin really was. Accordingly the frequent transfer of an interest in a tank without any change in the terms of the holding or in the amount of rent paid, extending over more than 60 years, was held to prove that the interest was a permanent and transferable one, which could be maintained against the proprietor of the talook in which the tank was situate.—21 W. R. 386.

11. A *kudeemee* or *mourosee* holding is something very much larger than what is known as a right of occupancy under the Rent Law; and where, according to the custom of the country, such a holding is a —, the purchaser takes the whole of the rights of the previous holder against the zemindar.—23 W. R. 36.

See Ejectment 34, 38, 60, 74, 90.
Enhancement 175, 222*a*, 252, 261.
Jurisdiction 109, 186, 199, 231, 250.
Middlemen 2.
Mokurruree Tenure 11, 21.
Occupancy 28, 30, 54, 58, 59, 79, 84, 97, 106.
Onus Probandi 117.
See Pottah 25.
Putnee Talook 75.
Re-entry 4.
Registration 14, 17, 37, 46, 96, 121, 122.
Relinquishment 2.
Rent 82.
Sale 26, 40, 193, 202, 208.
Voluntary Payment 4.

Transportation.

1. In awarding — in lieu of imprisonment, the term of — must not exceed the maximum term of imprisonment to which the prisoner is liable.—3 R. J. P. J. 54. *See also* W. R. Sp., Cr., 30.

2. Under s. 59 Penal Code, a Court can sentence to — only where the offence is punishable with imprisonment for not less than 7 years. It may, in passing sentence, commute the imprisonment to —, but cannot do so after the sentence of imprisonment has been passed. — W. R. Sp., Cr., 35 (2 R. J. P. J. 392).

3. To bring s. 59 Penal Code into operation, the punishment awarded on one offence alone must be 7 years' imprisonment, and cannot be made up by adding two sentences together, and then commuting the amalgamated period to —.—2 W. R., Cr., 1; 5 W. R., Cr., 44; 8 W. R., Cr., 2.

4. A sentence of — under ss. 59 and 112 Penal Code cannot exceed 10 years.—5 W. R., Cr., 16.

5. A sentence of — other than for life is illegal in the case of a conviction of murder.—6 W. R., Cr., 85.

6. An officer exercising the powers described in s. 1 Act XV of 1862, is competent, under s. 59 Penal Code, to commute a sentence of imprisonment into one of —.—(F. B.) 9 W. R., Cr., 6.

7. The High Court has no power to mitigate a sentence of — for life passed on a person found guilty of murder.—16 W. R., Cr., 75.

See Cumulative Sentences 9.
Fine 6.
Whipping 10.

Treason.

See State Offences.

Trees.

1. Property in a tree may be proved by showing that the tree grows on one's land, without proving acts of ownership.—W. R. Sp. 223.

2. A zemindar has a right in the — grown in his land by the tenant, who, though he may enjoy the benefits of the growing timber, has no power to cut the — down. The zemindar may sue to have his right in the growing trees declared.—W. R. Sp. 367.

3. By the terms of a lease giving the lessee the produce of certain —, the — themselves were held not to pass.—1 W. R. 352.

4. Where a lease is granted in perpetuity at a fixed rent, and the lessor reserves no reversionary interest in the land or in the — growing on it, the lessees are entitled to the ownership of the —.—10 W. R. 419.

5. *Huq-e-lagaun* or a right to a share of the produce of —, does not exist between co-sharers, where no ryottee right exists.—11 W. R. 226.

6. A *pesh-cush* sunnud, or grant at a quit-rent, of homestead and waste land, being construed to assign a heritable right in a tract of land capable of yielding fruits by virtue of which the holder during the continuance of his right possessed absolutely the entire use and fruits thereof,—*Held* that the lessor (or grantor) had no more right to the — planted by the lessee than he had to the crops sown by him.—21 W. R. 344.

7. A tree which stands upon land which is the subject of a lease, must be presumed to be included in that lease, unless the lessor suing to recover possession of it can prove either his prior possession before the alleged date of dis-

TREES (*continued*).

possession, or reservation of the tree by him at the time of making the lease.—24 W. R. 330.

See Assessment 2.
Damages 4, 5, 35, 38.
Encroachment 2.
Evidence (Estoppel) 86.
,, (Presumptions) 25.
Jurisdiction 87, 122, 319, 373.
Kubooleut 64.
Lease 50.
Mesne Profits 39.
Moveable Property 4.
Registration 88.

Trespasser.

1. In a suit to evict defendant on the allegation that he was a — who had occupied land deserted by plaintiff's ryot, the right of the ryot to sublet to the alleged — cannot be questioned.—3 R. J. P. J. 134.

2. An award under Act IV of 1840 does not relieve a party of the obligation to prove his right and title when sued by the zemindar as a —.—1 W. R. 210.

3. A person may be in wrongful possession of the land which he cultivates.—2 W. R. 219.

4. Equitable compensation is not due to a man who has trespassed and built a wall on another's land.—9 W. R. 115.

See Auction-Purchaser (Revenue Sale) 15.
Building 3, 6, 8.
Cattle Trespass.
Co-sharers 51, 56.
Costs 6.
Criminal Trespass.
Damages 53.
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Ejectment 38, 46, 99, 105.
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,, (Act X of 1859) 37
Malicious Prosecution 2.
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Onus Probandi 122, 257.
Practice (Possession) 77.
Recorders 2.
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Right to sue 15.
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Wrong-doer.

Trust.

1. A trustee who misapplies — funds should be compelled to compensate the *cestui-que* —, and is liable to heavy interest.—W. R. F. B. 60 (1 Hay 399).

2. Abuse of — by husband.—*Ib.*

3. If a — be created *bonâ fide*, the mere fact that the parties in possession of the — property do not carry out the conditions of the — does not invalidate the transaction. —2 Hay 557.

4. When it is found on the face of a deed creating a — that the transaction is *bonâ fide*, it is for the creditors who impugn the *bonâ fides* of the trust to prove their allegation. —*Ib.*

5. Where a property chargeable with a pension in perpetuity was in the custody of a trustee, and both the original donee and his heirs enjoyed the pension for a period of 30 years, though during the minority of the present executor and trustee some of the other heirs of the donor had obtained possession of the particular property upon which the pension was chargeable, the trustee was held liable to the donee, and left to take his remedy against the trespassers.—Sev. 457.

6. As between a trustee and any person claiming through the trustee time does not run until there has been a conveyance to a purchaser for a valuable consideration, a *cestui-que* — can follow the — property not only against the trustee but as against volunteers claiming under the —. —Sev. 878.

7. Where a trustee obtains a decree on a bond, the money due on which belongs to another party, he may be sued by that party's son for the benefit of the decree.—W. R. Sp. 190.

8. It is contrary to Hindoo law that a mother should be a trustee for a son who might hereafter be conceived.— W. R. Sp. 223.

9. Resulting —.—*See* Hindoo Law (Coparcenary) 16; Vendor and Purchaser 59.

10. Renunciation of —.—*See* Renunciation 2; Will 42.

11. An auction-purchaser buying with full knowledge of a — advertised in the sale proclamation, holds subject to the —.—1 W. R. 256.

12. If a trustee has power to make valid grants, the grantees have a perfectly good title if they take for valuable consideration without notice of the —.—5 W. R. 120.

13. A former abuse of — in another instance cannot be pleaded against a trustee who seeks to prevent a repetition of abuse, even if he was formerly implicated in the same courses against which he is seeking to protect the property, though it would be a reason for excluding him from the administration of the property as *sebait*.—(P. C.) 17 W. R. 41.

14. Where property is purchased out of the surplus proceeds of a —, which are not required for the purposes of a —, and which the trustee is entitled to retain for his own benefit, such purchase enures for his own benefit.— 19 W. R. 255.

15. Where a — is created under a will for certain purposes mentioned in the will (*e.g.* the maintenance of religious worship, charitable institutions, etc.), the properties belonging to the — cannot be taken charge of by the Collector under Act XX of 1858.—3 W. R. 278.

See Advancement 1.
Appeal 150.
Benamee 31, 38.
Breach of Trust.
Certificate 115.
Court Fees 7, 21.
Dower 12.
Endowment.
Evidence (Estoppel) 15, 65.
Hindoo Law (Coparcenary) 29, 59.
,, Widow 10, 26, 111.
Husband and Wife 6.
Jurisdiction 70, 270, 511, 515.
Limitation 22, 55, 68, 124, 138, 167, 183, 215.
,, (Act XIV of 1859) 68, 100, 101, 196, 238, 319.
Mortgage 124, 256.
Practice (Parties) 26.
,, (Execution of Decree) 126, 222.
Principal and Agent 28.
Putnee Talook 15, 90
Res Judicata 17.
Reversioner 6.
Right to sue 2.
Sale 220.
Sebait.
Secret Trust.

TRUST (*continued*).

See Securities (Government) 1.
Settlement 6, 11, 19.
Vendor and Purchaser 42, 59.
Will 40, 41, 42.

Tukseemnamah.

See Certificate 83.

Tullabana.

1. Under s. 22 Act XXIII of 1861 a Court is bound to fix a period for the deposit of —.—11 W. R. 290.

2. The default under ss. 5 and 6 Act XXIII of 1861 to deposit the requisite — in the proper Court is not excused by the fact of its having been committed by an ignorant kurpurdauz.—11 W. R. 417.

3. S. 7 Act XXIII of 1861 was held not to apply to a case where a decree-holder applied for execution a few days before the expiry of the term of limitation, and neglected to pay —, though allowed 5 days to do so.—15 W. R. 473.

4. A party who is ordered to put in — for witnesses is in time if he puts the money in on the day following the day of the order.—24 W. R. 122.

See Limitation (Act XIV of 1859) 110, 269.
Witness 64.

Tullubi-Brihmotur.

See Enhancement 252.

Tullubi-ishtahad.

See Pre-emption 7, 9, 10, 28, 67.

Tumasook.

See Bond.

Tumleeknamah

See Gift 23.
Onus Probandi 154.

Uncle.

See Certificate 17.
Father's Uncle.
Guardian 18.
Hindoo Law (Adoption) 49.
,, ,, (Inheritance and Succession) 8, 24, 26, 44, 59, 65, 72, 78.
Nephew.
Sister's Son.
Uncle's Daughter's Son.
Uncle's Son.

Uncle's Daughter's Son.

See Brother's Daughter's Son.
Hindoo Law (Inheritance and Succession) 3.

Uncle's Son.

See Hindoo Law (Inheritance and Succession) 4.

Under-Tenures.

1. A defendant talookdar under s. 51 Reg. VIII of 1793 is not debarred from claiming the benefit of that section because his tenure has not been registered by the zemindar under s. 48.—2 Hay 220, 7 W. R. 63, (*affirmed by P. C.*) 13 W. R., P. C., 11, 21 W. R. 439.

2. A landlord seeking to recover rent in a suit, is not bound to proceed against any person who may have any latent beneficial right to the tenure in respect of which the rent has fallen due, but only against whoever may be found in possession thereof with a legal right, and he is entitled to have his decree, eventually passed in his favor, satisfied by the sale of the tenure itself.—2 Hay 364.

3. — once recognized in any way by the Government as zemindar cannot be afterwards ignored.—2 W. R. 77, 139 (4 R. J. P. J. 116); 2 W. R. (Act X) 81; 3 W. R. (Act X) 127; 4 W. R. (Act X) 6.

4. Resumption of the superior holding does not vitiate the — if they will bear an equitable portion of revenue assessed.—(F. B.) 3 W. R. 72 (1 R. J. P. J. 443). *See also* 12 W. R. 128, 16 W. R. 35.

5. An under-tenant may sue to recover his — sold by his zemindar for arrears of rent, although his name does not appear in the zemindar's register; and he may sue in the Civil Court, although he did not previously intervene in the Collector's Court under s. 106 Act X.—3 W. R. (Act X) 156. *See also* 5 W. R. (Act X) 50, 7 W. R. 15. *But see* 7 W. R. 158.

6. Where an auction-purchaser did not avail himself of the right, under s. 30 Reg. XI of 1822, to avoid and annul a tenure created by his predecessor, it is not open to a person now holding, and to a mere lessee, to do so.—7 W. R. 91.

7. Dakhilas or receipts for rent, and payments at the old rate up to the present time, are evidence of confirmation of a tenure by an auction-purchaser and his successor. —*Ib.*

8. Since the passing of Act X of 1859, there is no law authorizing the attachment of — for arrears of rent unless under express power in the lease. The zemindar, if he continues to hold possession after collecting his dues, cannot claim more rent.—7 W. R. 293.

9. Tenants intermediate between proprietor and ryots are subject to the jurisdiction of the Collector under Act X of 1859, which contemplates under-tenants as distinct from ryots and contains provisions relating to both classes.—(P. C.) 9 W. R., P. C., 3.

10. Where a party purchases another's zemindaree rights in an estate in which that other created an under-tenure with a fixed rent, the circumstance that payment of rent on account of such tenure was suspended while the zemindaree was in the hands of the former proprietor does not affect the rights of his successor or the fixity of the rent.—10 W. R. 212.

11. A party wishing to assert his rights to a tenure of which the zemindar refuses to take rent from him, should give him distinct notice of the interest he claims.—10 W. R. 466.

12. An auction-purchaser cannot, under s. 16 Act VIII of 1865 (B. C.), avoid any incumbrance without notice of his intention to do so or other act on his part.—11 W. R. 160. *See* 12 W. R. 378.

So also under cl. 1 s. 11 Reg. VIII of 1819, and generally. —12 W. R. 383.

13. The auction-purchaser of an under-tenure sold under s. 16 Act VIII of 1865 (B. C.) acquires it free from any lakheraj incumbrance created by the previous holder, if the latter had no authority to create such an incumbrance.—12 W. R. 32.

14. S. 16 Act VIII of 1865 (B. C.) does not apply to sales of portions of —.—13 W. R. 257, 22 W. R. 541.

Nor are such sales authorized by ss. 105 and 108 Act X of 1859.—22 W. R. 421.

15. Cl. 2 s. 23 Act X, relating to the illegal exaction of rent, is not limited to suits by ryots, but applies to any under-tenant.—14 W. R. 269.

16. The object of s. 16 Act VIII of 1865 (B. C.) is to protect, not merely any one class of tenants, but the leaseholder of the particular land leased; the expression "khoodkasht ryots," as used there, meaning "resident and hereditary cultivators."—16 W. R. 206.

17. Under the strict provisions of the same section, no sanction of a zemindar will avail unless the right is vested in the holder of the — by the written engagement under which the — was created, or by the subsequent written

UNDER-TENURES (*continued*).

authority of the person who created it, or his representatives.—21 W. R. 137.

18. If the holder of an under-tenure allows his tenant to occupy the land rent-free for more than 12 years, the interest thus created in the latter is an incumbrance upon the under-tenure as much within the reason of s. 16 Act VIII of 1865 (B. C.) as if the holder had made a grant or a lease to his tenant to hold without paying any rent or at a merely nominal rent.—22 W. R. 413.

See **Auction-Purchaser (Execution Sale) 7, 17, 48.**
,, ,, (Revenue Sale) 12.
Churs 21, 36.
Co-sharers 30, 38.
Distraint 1.
Ejectment 78.
Enhancement 17, 184, 224, 259.
Forfeiture 18.
High Court 40, 71.
Jurisdiction 343.
Kubooleut 39.
Land taken for Public Purposes 26.
Limitation 165, 218.
Mokurruree Tenure 18.
Onus Probandi 20, 109.
Partition (Butwarra) 9.
Pottah 25.
Putnee Talook 88.
Registration 17, 37, 96.
Rent 87.
Re-sale 3.
Sale 3, 11, 25, 26, 40, 48, 50, 66, 74, 96, 97, 98, 104, 109, 116, 128, 131, 153, 170, 193, 218.
,, Law 7, 8, 9, 10, 13, 17.
Shikmee.
Talook.

Unlawful Assembly.

1. A sentence for being members of an — under s. 144 Act XLV of 1860 renders unnecessary separate sentences for House Trespass and Mischief under ss. 448 and 427.—3 W. R., Cr., 54.

2. Where a number of persons, members of an —, went to abduct A, and one of them killed B in the attempt to abduct A,—*Held* that all the persons concerned in the attempt at abduction were guilty, under s. 149 Penal Code, of causing the death of B.—13 W. R., Cr., 33.

3. Procedure to be observed in a case under s. 154 Penal Code.—15 W. R., Cr., 6.

4. There is no ground for the distinction between an — as a premeditated act and an affray as a sudden one.—18 W. R., Cr., 2.

5. It cannot be said that a person intentionally joins an — or continues in it, when it appears that he went to the place where the — took place, in order to prevent mischief from being done to his own property which he had a right to protect.—19 W. R., Cr., 66.

6. S. 149 Penal Code was not intended to subject a member of an — to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object, but only for acts done with a view to accomplish the common object, or which the accused knew would be likely to be committed in prosecution of the common object.—(F. B.) 20 W. R., Cr., 5. *See also* 24 W. R., Cr., 66.

7. Thus, where an — (party A) attacked party B, who were in occupation of land, to drive them off the land by force, and one of the members of party A fired a gun at and killed one of the persons in party B in consequence of a sudden and unexpected resistance offered by party B, the persons composing party A (except the person who fired the gun) were held guilty not of murder under s. 149 Penal Code but of rioting under s. 148.—(F. B.) *Ib.*

8. No charge of being members of an — under s. 141 Penal Code can be sustained when the intention of the parties was, not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised.—23 W. R., Cr., 25.

See **Culpable Homicide (not amounting to Murder) 7.**
Cumulative Sentences 5, 7, 12.
Deputy Magistrate 1.
High Court 18.
Land Dispute 23.
Murder 8.
Recognizance 7.
Rescuing Prisoner 1.
Rioting 1, 2, 8, 9.
Summary Trial 2.

Unlawful Compulsory Labor.

Amends cannot be awarded in a case of — under s. 374 Penal Code.—5 W. R., Cr., 1.

Usage.

See **Construction 72.**
Custom.

Use and Occupation.

See **Contribution 19.**
Landlord and Tenant 51.
Limitation 230.
,, (Act XIV of 1859) 298.
Market 3.
Pension 1.
Rent 92.
Timber 5.

Usury.

See **Interest 70.**
Zur-i-peshgee Lease 4.

Vacations.

When the last day for filing an appeal or review falls on a Sunday, or on a holiday on which the Court is closed, whether that holiday consists of a single day or of several days, the appeal or review may be filed on the day after the holiday.—(F. B.) 12 W. R. F. B. 21.

So also as to an appeal to the Privy Council.—12 W. R. 293.

So also as to notice for new trial in Small Cause Court.—13 W. R. 105.

So also as to plaint.—*See* Limitation (Act XIV of 1859) 77; Limitation (Act IX of 1871) 24.

See **Limitation 107, 175.**
Mortgage 173, 191.
Practice (Appeal) 11, 33.
,, (Review) 40.
Sale 55, 105.
Special Appeal 80.
Time 7.

Vakalutnamah.

1. In a remanded case a fresh — is not necessary.—1 W. R. 276.

2. A — couched in general terms suffices *primâ facie* to

VAKALUTNAMAH (*continued*).

authorize a vakeel on behalf of the plaintiff to withdraw from the suit.—5 W. R. 80.

3. A fresh — is not necessary in an application for a new trial before a Small Cause Court.—12 W. R. 465.

See Ex-parte Judgment or Decree 2.
Forgery 10, 15.
Pleader 20, 21, 29.
Waste Land 5.

Value of Goods.

See Joinder of Parties 1.
Jurisdiction 19, 26, 182.
Municipal 29.
Sale 156.

Value of Suit or Appeal.

1. A plaintiff suing for declaration of his title to certain lands on reversal of the *kubalas* said to have been illegally executed by his father, need not value the case at the total of the consideration mentioned in those deeds.—W. R. Sp. 317 (L. R. 95).

2. Instead of dismissing a case on account of under-valuation, the Judge should try it on the merits, upon the plaintiff putting in a sufficient stamp to make up the proper valuation.—1 W. R. 135. *See also* 12 W. R. 484.

3. Ss. 30 to 32 Act VIII apply only to the first filing of the plaint. If it appears for the first time at the trial that the suit is under-valued and that the Court would have no jurisdiction to entertain it if properly valued, the suit should be dismissed.—8 W. R. 47. *But see* 13 W. R. 358.

4. Where the under-valuation of a suit affects the jurisdiction of the Lower Court, the Appellate Court should dismiss the case.—10 W. R. 207. *See* 14 W. R. 228.

5. The word "value" in Rule 3 of the Rules of Practice of 10th May 1866 is not to be confounded with the valuation of the suit.—11 W. R. 36.

6. Where a claim is under-valued, the Moonsiff is right, under s. 31 Act VIII, in not dismissing the suit but rejecting the plaint; and on the plaint being duly stamped, the Principal Sudder Ameen has jurisdiction to try the case and the Judge in appeal is wrong, with reference to s. 350, in reversing the Principal Sudder Ameen's decree.—11 W R. 177. *See also* 11 W. R. 541, 13 W. R. 357, 24 W. R. 225.

7. S. 350 does not prohibit an Appellate Court from modifying or reversing a Lower Court's decision on the ground of under-valuation if the proper valuation would take the suit beyond the jurisdiction of that Court.—11 W. R. 257, 479.

8. Under s. 32 Act X of 1862 an appeal relating to the valuation of a claim can be entertained by the High Court.—11 W. R. 479.

9. If any question as to the valuation of property in dispute is raised by either of the parties, the final decision upon that point is vested in the Court which hears the suit.—13 W. R. 326.

10. A Lower Appellate Court was held to have done right in dismissing a suit on the ground of under-valuation, although the plaint had been admitted and acted on by the first Court without objection by the parties.—14 W. R. 195.

11. Where a pre-emption suit was valued at 31Rs. instead of 2000Rs., the High Court in special appeal refused to remand the case to enable the plaintiff to make up the deficient stamp duty.—*Ib.*

12. It is not open to a Lower Appellate Court to enter into the matter of valuation of its own accord, where that has not been raised by the defendant in the first Court.—14 W. R. 196.

Or in the grounds of appeal.—22 W. R. 433.

13. An appellant (plaintiff) was held to have acted rightly in putting in his appeal upon the valuation which he put upon the suit as approved of by the first Court, although it turned out to be an over-valuation; and the Appellate Court was held justified in awarding costs in proportion to what it considered the proper valuation.—20 W. R. 206.

14. Where an appeal had not been valued on the whole claim, but only with reference to the particular interests of the appellants, and the difference was not large, the High Court in special appeal directed that the case should proceed in the Lower Appellate Court upon the appellants paying in the amount of difference in stamp duty.—21 W. R. 256.

15. The fact that a suit eventually decreed by the Subordinate Judge for less than 1000Rs. would have been cognizable by the Moonsiff's Court, is no ground for dismissing it, although it is a ground for providing that plaintiffs should not be allowed any more for costs than they could have recovered if they had sued in the Moonsiff's Court.—21 W. R. 138.

And though the Subordinate Judge may properly transfer such a suit to the Moonsiff for trial, yet by s. 19 Act VI of 1871 the former is empowered to try causes of any value.—25 W. R. 219.

16. Where a suit is for recovery of possession (with mesne profits) of a certain portion of land, and for a declaration of right in respect of the remainder, its valuation should not include the value of the latter, which is only nominal and requires a stamp of 10Rs.—25 W. R. 23.

17. A Court has means of punishing a plaintiff for over-valuation by saddling him with costs or in any other way, but ought not to dismiss the whole of a case merely because plaintiff had improperly claimed a particular item for the express purpose of ousting the Small Cause Court of its jurisdiction.—25 W. R. 76.

See Appeal 27, 28, 45, 78, 95, 104, 106, 138, 173, 177, 191.
Arbitration 64.
Co-sharers 38*a*.
Costs 99.
Court Fees 6, 17, 27, 28, 29.
Damages 19, 49, 51, 75.
High Court 9, 121, 130.
Joinder of Causes of Action 5, 7, 8.
Jurisdiction 27, 31, 43, 213, 379, 395, 411, 439, 465, 486, 487, 502.
Limitation 249.
,, (Act XIV of 1859) 21.
Mesne Profits 85.
Paper Book 3.
Plaint 14.
Practice (Review) 90.
Privy Council 1, 4, 11, 13, 28, 29, 56, 61, 64, 73, 80.
Small Cause Court 12.
Special Appeal 3, 25, 27, 33, 75, 97*a*, 98, 119, 120, 132, 137, 142.
Stamp Duty 17, 23, 40, 59, 61, 62, 68, 69.

Variation.

See Account 5.
Attached Property 17.
Building 10.
Carrier 3.
Churs 55, 56.
Deed 4.
Endowment 45, 70.
Enhancement 73, 106, 107, 119, 140, 143, 148, 149, 160, 178, 179, 185, 188, 208, 211, 212, 222*a*, 228, 235, 244, 248, 263, 269, 272, 280, 282.
Evidence (Admissions and Statements) 21.
,, (Oral) 2.
Ferry 7.
Hindoo Law (Coparcenary) 62.
Judgment 3.

VARIATION (*continued*).

See Jurisdiction 289.
Land 2.
Lease 73.
Mortgage 71.
Notice 26.
Practice (Amendment).
„ (Appeal) 76.
„ (Suit) 9, 18, 34, 37.
Pre-emption 78.
Proclamation 2.
Putnee Talook 115.
Registration 115.
Ryots 4.
Sale Law (Act XI of 1859) 33.
Special Appeal 84, 132, 145, 151, 155, 156.
Title 10.
Will 29.

Vendor and Purchaser.

1. In a suit by a purchaser against the vendor for the recovery of the land purchased, the Court will not, at the instance of a pottahdar, determine the validity of a mourosee pottah alleged to have been previously granted by the vendor.—1 Hay 67 (Marshall 30).

2. A purchaser under a sale for arrears of rent is not entitled to have the purchase set aside, on the ground merely of an irregularity in sticking up the preliminary advertisement, unless he can show that he has been prejudiced thereby.—1 Hay 68 (Marshall 31).

2*a*. An innocent purchaser for full consideration but without good title, can only be required to account to the rightful owner for the profits during his possession, and is entitled to take credit in the account for all needful expenditure in the preservation and improvement of the property.—1 Hay 410. *See also* 5 W. R. 219.

3. Where articles are sold on the condition that their prices would be settled hereafter, and the vendee having parted with them puts them beyond his power to produce them in Court when sued for their value, the bare allegation of the vendor regarding their prices cannot be treated as evidence in the case, but the Court can rely upon the vendor's account-books if no other satisfactory evidence be tendered on the point by the vendee.—2 Hay 267.

4. B advanced money to A for the purchase of an estate. The estate was purchased by A but conveyed to B. *Held* that before A could maintain a suit to obtain possession of the land from B, he was bound to pay or tender the money advanced by B.—Marshall 494.

5. When a vendor is not paid a part of his consideration-money, he cannot wholly disaffirm the contract, but he can establish his lien upon it.—2 Hay 576.

6. A purchased property in the name of B, and allowed B to occupy and retain possession of the property. B mortgaged the property to C for a valuable consideration. *Held* that A and those claiming through him were estopped from asserting as against C his or their titles to the property, and that the mortgage was valid.—Marshall 569. *See* 14 W. R. 95.

7. In a suit for balance of price of goods sold and delivered, defendant set up but could not prove an accepted contract for credit for three years; and as more than a year had passed since the goods were supplied and no question arose as to what was a reasonable credit, the plaintiff was held entitled to a decree.—Sev. 198.

7*a*. A party acquiring property as purchaser with notice of its being pledged to another, cannot claim it as previously hypothecated to him.—W. R. Sp. 144.

7*b*. A *bonâ fide* purchaser should not be deprived of the benefit of an honest purchase, even though the sale to his vendor was fraudulent, if he had no notice of the fraud.—W. R. Sp. 225.

7*c*. The rights of *bonâ fide* purchasers and mortgagees are not to be defeated by earlier obligations in the hands of third parties never in possession.—*Ib.*

8. Where the purchaser of an estate pays earnest-money, and no time is fixed for the payment of the balance, the vendor is bound to wait a reasonable time before he can re-sell the property.—W. R. Sp. 281 (L. R. 63).

9. Where a vendor receives the greater part of the purchase-money in the shape of old debts recited in the deed, and refuses the remainder tendered in cash, the purchaser is entitled to sue for specific performance or for breach of contract.—W. R. Sp. 343.

10. Right of *bonâ fide* purchaser for valuable consideration without notice from an owner of property subject to a lien or charge, to defeat such prior lien or charge.—(P. C.) P. C. R. 483 (Marshall 461). *See also* 14 W. R. 49, 18 W. R. 151.

11. Where a vendor has contracted with two different parties for the sale to each of them of the same estate, the Court will *primâ facie* enforce the contract first made.—1 Hyde 45.

12. Where a deed of sale of land covenanted for the payment of the purchase-money on the vendor registering the deed, and registration was duly made by the vendor but no consideration was paid by the purchaser within a year, and the purchaser sued for possession of the land, the Court, before declaring the equities, remanded the case for a finding on the issues as to the intention of the parties respecting the time of payment, and whether (as alleged by the defendant) in consequence of non-payment by the plaintiff the defendant was jeopardized as to his other property and had to sell at a loss.—1 W. R. 38.

13. A sale of pledged property, when declared valid by decree of Court, disposes of questions of ownership in favor of the purchaser, though the purchaser be the vendor's wife.—1 W. R. 64.

13*a*. A person is not a *bonâ fide* purchaser for value who has obtained neither title nor possession.—1 W. R. 115.

14. A purchaser is not bound by a decree against his vendor in a suit commenced after his purchase.—1 W. R. 286.

14*a*. A purchaser from an ostensible owner, who knew that one of the beneficial owners was a minor and took the precaution to obtain the consent of the other beneficial owner who was of age, was held not to be a *bonâ fide* purchaser.—1 W. R. 324.

14*b*. Liability of a purchaser of a mortgaged *gantee* tenure when the mortgagor had previously agreed to pay the zemindar not only the *gantee* rent, but an annual sum in liquidation of a debt.—2 W. R. 121.

14*c*. Who is legally a *bonâ fide* purchaser from a childless Hindoo widow.—2 W. R. 123.

14*d*. A purchaser is not liable for debts of former owner.—2 W. R. 271.

15. The non-registration of a contract by A to sell land to B at some future time on receipt of balance of sum agreed on, is no bar to B's preferential claim over C, a subsequent purchaser whose sale has been registered under Act XIX of 1843.—3 W. R. 64.

16. If C purchased in good faith and without notice, and is in possession, his possession cannot be disturbed by A's breach of contract with B, but B's remedy is not by a suit for specific performance, but by a suit for damages.—*Ib.* *See also* 6 W. R. 234.

17. Where there is an agreement to sell, and a part of the consideration-money has been received, the stipulating purchaser is entitled to specific performance on paying down the rest of the purchase-money.—3 W. R. 103.

18. An agreement to sell at some future period may be registered under Act XIX of 1843.—*Ib.*

19. Unpaid purchase-money creates no lien on the property sold against third parties who are *bonâ fide* purchasers for valuable consideration.—3 W. R. 168.

20 In the absence of reservation or restriction, a purchaser of a fraction of a share of an estate acquires a right either to cultivate on the same conditions as to rents as his vendors, or to claim a share of the rents just as he would from any ryot of the estate.—5 W. R. 117.

21. Purchaser of a decree.—*See* Adjustment 6; Appeal 83, 84, 148; Assignment 12; Auction-Purchaser (Execution Sale) 35; Benamee 11; Cross Decrees 7, 8; Hindoo Law (Coparcenary) 40; Husband and Wife 45; Injunction 11; Limitation 166*a*; Limitation (Act XIV of 1859) 223; Onus Probandi 130, 235; Practice (Appeal) 10; Practice (Execution of Decree) 11, 59, 83, 110, 131, 270; Practice (Parties) 18; Right of Appeal 5; Special Appeal 53; and 49, 57 *post.*

Purchaser of share of a decree.—*See* Practice (Execution of Decree) 203, 263, 265.

VENDOR AND PURCHASER (*continued*).

22. A bonus paid for a *putnee* not in existence is refundable, there being an entire failure of consideration; the principle of *caveat emptor* not applying to such a case.—5 W. R. 232.

23. Where a bill of sale, though signed and registered, has not been delivered, and no part of the purchase-money has been paid, the vendor cannot be compelled to complete the transfer.—5 W. R. 248.

24. The purchaser is not bound to prove that the money borrowed was appropriated for the maintenance of the minor.—6 W. R. 34.

25. The purchaser from a Hindoo widow who is still living, is entitled to possession of the property sold, whether there was necessity for the sale or not.—6 W. R. 36.

26. Where goods have been fraudulently purchased, the vendor has a right to disaffirm the contract, even if the property passed with his consent to the purchaser, who must be considered as his agent and the possession that of the vendor.—6 W. R. 81.

27. Nothing subsequently done or suffered by a vendor can affect the rights acquired by the purchaser at the time of the sale.—6 W. R. 230.

28. The purchaser of a fractional part of an entire estate, subject to a charge, is liable singly to satisfy that charge out of the portion of the property in his possession.—6 W. R. 253.

29. An unenquiring purchaser from a Hindoo wife whose husband is living at the time, is in no sense a *bonâ fide* purchaser without notice.—6 W. R. 312.

30. Pleas set up in former suits for rent brought against a vendor by persons who have omitted to insert their names in the putnee pottah, do not constitute notice of title to an innocent purchaser for valuable consideration.—6 W. R. 318.

31. Where a tenure once sold in execution as a *jote jumma* and purchased by a speculative purchaser for a nominal price, is again sold by the decree-holder, on discovering his mistake, as a *shamilat talook* (which it is in fact), and purchased by the latter *bonâ fide*, the second purchaser is entitled to succeed, and not the first, who cannot be considered as an innocent purchaser for valuable consideration.—6 W. R. 4.

32. A mere agreement to sell a certain property without any consideration passing, cannot bar the right of the vendor on the same day to sell a portion of the property to a third party or invalidate the third party's purchase.—7 W. R. 38.

33. There is no fraud in a purchaser securing the assent both of the ostensible and beneficial owners to his purchase, so as to acquire a good title.—7 W. R. 138.

34. Suit by purchaser on warranty of title by vendor.—7 W. R. 196.

35. Where a vendor, knowing that he has no right or title to property, or being cognizant of the existence of incumbrances or of latent defects materially lowering its value, sells it and neglects to disclose such defects to the purchaser, there is a fraudulent concealment vitiating the contract and rendering inapplicable the principle of *caveat emptor*.—7 W. R. 258.

36. A man buying in the face of hostile claims cannot set himself up as an innocent purchaser without notice.—8 W. R. 399. *See also* 9 W. R. 556.

37. Where several properties are comprised in one deed of sale, the purchaser runs the risk of having his title in all the properties shaken, should the purchase as to one of them be called in question in a regular suit.—8 W. R. 483.

38. A party purchasing with notice that his vendor's title is contested, must take his chance if that title turns out invalid.—9 W. R. 86.

39. A sale of a quantity of mustard-seed which was not required by the purchaser for his own private use, but with the object of making oil, is a sale of goods wholesale.—9 W. R. 193.

41. Where plaintiff had contracted with defendant to purchase from him a share of certain landed estates, excluding from the contract certain land in those estates situated within a defined boundary, and defendant bound himself to make over to plaintiff other lands in exchange, but failed to do so,—*Held* that plaintiff might sue for specific performance or for damages, but could not, under the contract, sue to recover lands which he did not buy.—9 W. R. 269.

42. When either the vendor labors under disqualification, or the purchaser stands in a fiduciary relation to the owner of the property, the *bona fides* of the dealing cannot be presumed but must be made out by the purchaser.—9 W. R. 297, 10 W. R. 128.

43. An advertisement setting forth a description of villages and inviting purchasers is substantially an implied warranty of title, and makes the advertizer responsible to the purchased deceived by any misrepresentation therein. It is a sufficient proof of fraud if the fact of ownership as represented in the advertisement is false, and the person making the representation had the knowledge of a fact contrary to it. The fraud having been substantially alleged, the absence of a stipulation to refund does not protect from refunding.—9 W. R. 37P. *See also* 18 W. R. 276.

44. Under the Mahomedan law, there is nothing *primâ facie* bad in a sale by a Mahomedan heir, so as to invalidate the title of a *bonâ fide* purchaser for valuable consideration and without notice of any reason why the sale should not have been made.—10 W. R. 216.

45. Where plaintiff purchased from defendant an estate which had, before the sale, been attached under a decree held by another party against defendant, and paid the amount of the decree and interest to prevent a sale in execution,—*Held* that the maxim of *caveat emptor* was wholly inapplicable to such a case, and that, whether plaintiff did or did not know of the attachment, she was entitled to recover from the defendant the amount which she had paid.—10 W. R. 380.

46. The purchaser of the rights of a co-sharer is bound by all the arrangements made in respect to the collections.—10 W. R. 441.

47. The relationship between parties to a conveyance of property is not immaterial where the question is whether the purchase is true or fraudulent; and the mere handing over of the purchase-money before strangers, and registration, are not sufficient proof of a *bonâ fide* transaction.—10 W. R. 445. *See also* 15 W. R. 305, 24 W. R. 400.

48. A Judge was held to have been wrong in law in dismissing a suit upon the sole ground that plaintiff had not proved the purchase which he alleged by producing his vendor as a witness.—11 W. R. 311.

49. Where a party, obtaining a money-decree, attached an estate mortgaged to himself by a registered bond and sold it without mention of the mortgage, and then getting a decree on the registered bond, sold it to a party who attached the estate in execution,—*Held* that the purchaser of the latter decree stood in the same position as his vendor, and could not set up a lien under the bond as against a purchaser induced by the vendor himself to buy the property in the belief that the debtor's title was valid.—12 W. R. 303.

50. A sued B on a deed of sale for possession of 4 annas of certain lands which A alleged B had sold him in consideration of an advance of a sum of money which A said he paid to B when the deed was executed. B answered that, being in want of funds to carry on a suit for the recovery of the very lands of which A now sued for 4 annas, he gave A the deed in question on the condition that A was to advance him the amount mentioned in the deed, but that A only advanced portions of the sum from time to time. The allegation of A that he paid the money to B when the deed was executed, was found to be false. *Held* that the execution and transfer of the deed of sale from B to A, and the partial payment of the purchase-money by A to B, did not pass to A a complete title to the lands, and that B in retaining possession could not be regarded as having only a lien for the unpaid portion of the purchase-money, or liable to account to A as a mortgagee in possession of the rents and profits; and that even if part of the purchase-money had been paid by A to B at the time of the execution of the deed, and A tendered to B the remainder of the purchase-money, A would not have been entitled to a decree for specific performance, the contract sued on being a speculative, not to say a gambling, one.—(P. C.) 12 W. R., P. C., 6. *See also* (P. C.) 18 W. R. 140, 21 W. R. 101.

51. A party buying a specified talook with an additional description that it contains so much land, gets the whole land covered by the specification, although it may be more than that contained in the description.—14 W. R. 117.

VENDOR AND PURCHASER (*continued*).

52. A purchaser from a Mahomedan heir is not bound, as if he were dealing with a Hindoo widow, to enquire into the existence of a legal necessity; and even when the property is sold in execution of a decree, he is not bound to ascertain whether it is sold for the private debts of the judgment or for ancestral debts.—14 W. R. 289.

53. Registration of a deed does not affect the question of *bona fides*, nor is a conveyance *bonâ fide* because there is proof of its execution and the statement of witnesses unacquainted with the circumstances; but the circumstances and probabilities are to be carefully weighed.—15 W. R. 15. *See also* 15 W. R. 305.

54. Where a purchaser, after depositing earnest-money for the purchase of land, does not complete the purchase, he is bound to show that he has an equitable right to have back the money.—15 W. R. 41.

55. The general principles of the Mahomedan law, according to which a complete and binding sale is said to take place upon payment of part of the consideration-money, cannot be applied to a case in which one of the stipulations in the contract was that the payment of the full amount of purchase-money should be a condition precedent to the extinction of the vendor's title, and in which it was doubtful as to whether the advance that was made by the purchaser was for part of the consideration-money; it being held that the Court was bound to see whether it was, or was not, the intention of the parties that a complete and binding sale should take place although the purchase-money was not paid.—15 W. R. 44.

56. *Bona fides* on the part of a purchaser cannot make a title in his vendor where the conveyance is fraudulent.—15 W. R. 308.

57. The purchaser of an *ex-parte* decree tainted with fraud, cannot be allowed to profit by it.—15 W. R. 340.

58. A party purchasing what he knows to be the right and title of some one else than his vendor cannot claim the character of an innocent purchaser, and is not entitled to compensation for improvements to the property so purchased by him.—16 W. R. 169.

59. Where immoveable property is purchased with money not belonging to the purchaser, the principle of a resulting trust is that the purchase was made with an implied trust that the property should belong to the person to whom the money belonged; but if no such trust was intended, it could not arise by implication and the presumption would be met by the facts.—(P. C.) 17 W. R. 259.

60. There is nothing in the position of a vendor being a Mahomedan woman living with her children upon the estate, and sometimes letting it, which should put any one upon enquiry whether she was the real owner or not.—(P. C.) 18 W. R. 166.

61. The mere fact of a man building upon or spending money to improve property belonging to the woman with whom he was living cannot lead to the inference that, contrary to the apparent title, he had purchased the land for himself; and neither this nor the circumstance of the deed of sale from a Mahomedan woman containing the apparently usual clause that she had made the sale with the consent of the family, is sufficient to put the purchaser on enquiry.—(P. C.) *Ib.*

62. Purchase of a right of appeal.—*See* Right of Appeal 8.

63. In a suit to recover possession with mesne profits of property alleged to have been purchased by plaintiff (a pleader), where the question was whether plaintiff had obtained the property by a valid deed of sale, and where the evidence for the payment by plaintiff of the consideration-money was so unsatisfactory that the High Court summoned the plaintiff and examined him,—*Held* by the Privy Council that it was somewhat dangerous to allow plaintiff, a professional man, who did not give evidence in his own suit on his own behalf, to be called in appeal for the purpose of supporting his case which had broken down; that plaintiff's evidence as to payment of the consideration-money was very unsatisfactory and at variance with his previous deposition; and that, though the mere *factum* of the deed was proved, it was not a *bonâ fide* conveyance.—(P. C.) 19 W. R. 118.

64. An intending purchaser of property which has been previously mortgaged, who has no reason to suppose it to be joint family property, or the vendor to be a member of a joint family, and who has enquired of and learnt from the mortgagee that there was no fraud, is not bound to make any further enquiry.—20 W. R. 100.

65. Where on a sale being set aside,—appealed separately, and the Judge, on the appeal of the purchaser in which the vendor was not a respondent, ordered the latter to refund the purchase-money to the former,—*Held* that the decision was illegal and that the purchaser should have been referred to a separate suit.—20 W. R. 149.

66. Where a party after contracting to sell land to another, executing a *byna-pottro*, and receiving a part of the consideration-money, sells the same land to other parties, such sale is vitiated if the purchasers are aware of the previous contract even though specific or formal notice thereof had not been given to them.—20 W. R. 385.

67. Where a *kubala* is not executed within the stipulated date, an intending purchaser is not entitled to compensation under s. 74 Act IX of 1872, unless he can show that he tendered the purchase-money, and the bond, together with a draft of the *kubala*, to the opposite party, who then refused to execute it.—20 W. R. 481.

68. Where in a *kubala* the vendor thus bound herself to the purchaser:—" If any one objects to my sale and gives you any sort of trouble, I will arrange it; and if I fail to do so, I will restore the purchase-money: in default, you may realize it by an action,"—*Held* that it was intended to provide not only against defect in the power of the vendor as a Hindoo widow, but against any disturbance of the purchaser and to protect him against dispossession.—21 W. R. 398.

69. If a person knows that another has or claims an interest in property for which he is dealing, he is bound to enquire what that interest is; and if he omits to do so, he will be bound, although the notice was inaccurate as to the particulars or extent of such interest.—(O. J.) 22 W. R. 248.

70. Although, according to the principles of equity, in certain cases a contract may be set aside without positive fraud unless it is shown to have been made upon adequate consideration, yet before the defendant is called upon to prove that he has given full value for property sold to him, the plaintiff must first make out that the parties to the bargain were dealing on terms so unequal as to render it improper for a Court of justice to enforce the contract unless shown to be one which a prudent person with proper advice and assistance might well have made.—22 W. R. 341.

71. Where a party sells property to others, and it afterwards appears that he had not the right to do so, and the purchasers are in consequence dispossessed, the loss ought to fall on the vendor, and not on the purchasers who put faith in his act of selling.—22 W. R. 442.

Semble there is no difference in this respect between a private sale and a sale by auction in execution of decree.—*Ib.*

72. A purchaser's title to the property purchased is not affected by the mere fact of his being kept out of possession in consequence of the wrongful act of his vendors.—24 W. R. 248.

73. Meaning of the rule of *caveat emptor*.—25 W. R. 45.

74. A purchaser is bound to look not only to his own title, but to see that he is properly indemnified by the covenants in his deed of purchase; if he does not so protect himself, he has no remedy, for if a deed of purchase has been once executed, unless there is an eviction by the vendor or some person claiming under him, the purchaser has no right of action against the vendor.—*Ib.*

75. Where a person purchased certain lands under a bill of sale in which the vendor undertook to apply to the Revenue authorities for the transfer of the lands to the name of the purchaser and did so, and both parties clearly understood what they were doing,—*Held* that the refusal of the Revenue authorities to enter the purchaser's name in the mutation register did not constitute a ground for cancelling the sale and demanding back his purchase-money.—25 W. R. 352.

76. A person who purchased joint family property without notice that there were contested rights, and in the belief that the vendor was entitled to sell (of grant a *mourosee* lease), was held entitled, when a third party came forward and claimed the property, to recover the purchase-money, unless bad conduct or bad faith could be brought home to him.—25 W. R. 368.

VENDOR AND PURCHASER (*continued*).

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Village Chowkeedar.

A liability on the part of a land-holder to pay the wages of a — appointed under s. 21 Reg. XX of 1817, cannot be inferred from the fact that the latter's salary was fixed by the heads of the village, and apportioned among the house-holders without objection made by any of them, but must be proved.—18 W. R. 298.

See Limitation (Act XIV of 1859) 300.

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Self-acquired Property 6.
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Voluntary Payment.

1. A payment made by a judgment-debtor to the assignee of a decree-holder was held to be a — which could not defeat the rights of the decree-holder.—W. R. Sp., Mis., 8.

2. A person making a — to stay a sale in execution of a decree against others, cannot sue under s. 102 or 103 Act X of 1859 for the recovery of the money so paid by him.—2 W. R. (Act X) 48.

3. Where plaintiff made a — of rent to defendant, it was held that plaintiff could only recover the money sued for, by proving that it was paid on such a mistake of fact of its being due to defendant as to render it inequitable as between plaintiff and defendant that the latter should keep it, or that it was paid through any fraud on the part of defendant, either constructive or actual.—4 W. R. 28.

4. A suit will not lie to recover — made to save a transferable tenure from sale for arrears for rent under s. 105 Act X.—4 W. R., S. C. C., 4.

5. Where a person, in order to save his indigo factory from sale in execution of a decree against a third party, paid the amount of the decree into Court, such payment was held to be not a — but made under legal necessity.—7 W. R. 403. *See also* 10 W. R. 453.

6. Plaintiff's ancestor purchased in execution the right, title, and interest of R, but finding that, antecedently to the sale, the right, title, and interest of R and of two others had been attached in execution of a decree against D (R's uncle and father of the two others), prevented the sale by paying in the amount due. *Held* that as R was not legally bound to pay the amount due under the decree against D, the payment by plaintiff's ancestor was a — and plaintiff could not recover.—10 W. R. 400.

7. Where the purchaser of a jote jumma, to save the tenure from sale under a decree against defendant obtained by the putneedar for arrears of rent due before the purchase, pays the amount of the decree,—*Held* that the payment was a — made without legal necessity, and was not recoverable by suit against defendant.—10 W. R. 446.

8. Where money was deposited in Court by a judgment-debtor under protest, for the purpose of preventing an injurious sale, and the depositor, declaring his intention to bring a regular suit to set aside the summary order rejecting his claim, prayed that the sum might be paid to the decree-holder and the sale stayed, the payment was held not to be a —.—(P. C.) 10 W. R., P. C., 29.

9. Where money was deposited in Court by a party to protect from sale for arrears of rent a tenure in which he had acquired an interest, such payment was held not to be a — and could be recovered from the person who had enjoyed the profits of the land for the period for which the arrears had accrued.—19 W. R. 287.

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See Hindoo Law (Inheritance and Succession) 63.
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Waiver.

Receipt of rent is not *per se* a — of every previous forfeiture, but only evidence of a —.—18 W. R. 218.

See Abatement 33.
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See Building 9.
Landlord and Tenant 39.
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Warrant.

1. The nature of — which a Magistrate is empowered to issue under s. 68 Act XXV of 1861; and when a fresh — is necessary under s. 222 or s. 224.—13 W. R., Cr., 1.
As to former, 16 W. R., Cr., 50.
As to s. 224, 17 W. R., Cr., 55.

2. Under what circumstances a Magistrate may, under s. 77 Act XXV of 1861, issue a — to an unofficial person.—13 W. R., Cr., 27.

3. Under what circumstances a Magistrate has jurisdiction to issue a — under s. 260 Act XXV of 1861.—14 W. R., Cr., 20.

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See Mesne Profits.

Waste.

1. Right of reversioner to sue to prevent — by Hindoo widow.—(F. B.) W. R. F. B. 165. *See also* Sev. 182; 7 W. R. 119.

2. Cutting down of trees by tenant an act of voluntary —.—S. C. C. 77.

3. Right of assignee of reversionary interest to prevent — by Hindoo widow.—Marshall 622.

4. A wilful default by a Hindoo widow to cause a sale for arrears of revenue is an act of —, to prevent which a reversioner is entitled to sue.—7 W. R. 303.

5. A suit on the mere allegation that defendant, having only a life interest in certain property, should be prevented from wasting the money representing it, will not lie unless some act of — is proved.—9 W. R. 362.

See Certificate 26.
Endowment 74.
Hindoo Law (Alienation) 6.
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Limitation 36, 103.
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Waste Land.

1. — may be in the possession of some one.—2 W. R. 135. *See also* 8 W. R. 422.

2. In a suit for possession of —, where limitation is pleaded, plaintiff's cause of action dates from adverse possession.—*Ib.*

3. A pottah for — in the Soonderbunds, which specifies boundaries, secures to the grantee all the lands within such boundaries.—2 W. R. 239.

4. The Court constituted by s. 7 Act XXIII of 1863 cannot extend the period of 30 days allowed by s. 5 for the institution of a suit to contest an award by the Board of Revenue.—5 W. R., W. L. C., 1.

5. The filing of a *vakalutnamah* is not an institution of such a suit.—*Ib.*

6. In suits under s. 5 Act XXIII of 1863, the plaint must be on stamp paper of the value laid down in Art. 11 Sch. B Act X of 1862.—7 W. R. 349.

7. Where land is sold as — under Act XXIII of 1863, a person who was in occupation before the sale cannot claim a pottah from the purchaser if he did not come in time to stop the sale; his remedy is by a suit for compensation under s. 18, making the Collector a defendant.—7 W. R. 473.

8. There may be such possession of — as to protect a suit from being barred by limitation, and when the question of possession is doubtful, a presumption will arise in favor of the party who proves title.—11 W. R. 267. *See* 22 W. R. 405.

See Assessment 3.
Enhancement 37.
Evidence (Estoppel) ...
Ghatwals 11.
Lease 31, 49, 50.
Onus Probandi 55, 94.
Practice (Possession) 56, 61, 84.
Right of Way 2.
Trees 6.

Water.

1. Difference between the rights of riparian owners in streams and jheels.—1 Hay 426.

2. The right of fishery and taking the other profits arising from the use of — is a mere incorporeal right to be exercised by the grantee, and does not imply any right of property or interest in the ground covered by the —.—2 Hay 468 (Marshall 334).

3. Reg. XI of 1825 does not apply to the lands of a *bheel* that have silted up by the recession of —, for the land is not an accretion caused by the action of the sea or of a river.—*Ib.*

4. Plaintiff claimed a prescriptive right to the flow of the surface drainage — from the land of the defendant into his land. *Held* that such an easement can be acquired only where the — flows in a definite channel.—Marshall 506.

5. In a suit for interrupting the flow of — from the land of the defendant to the land of the plaintiff, it appeared that 8 years before suit the defendant had diverted the —, and that it had been diverted ever since. *Held* that the right, if acquired, would not necessarily be lost by the interruption, but that if the plaintiff acquiesced during all that time in the interruption, it might be some evidence of an abandonment of the right.—*Ib.* *See also* 7 W. R. 367, 12 W. R. 519. *See* 20 W. R. 287.

6. A grant of the *julkur* or right of fishery of a river does not give to the grantee a title to fish in the sheets of — adjacent to the river and with which it communicates only in time of floods.—Sev. 463.

7. It does not follow that, because under Reg. XI of 1825 the plaintiff is the rightful owner of the land accreting to his estate, he is the rightful owner also of the — adjoining the accreted land.—Sev. 754.

8. Where it is found as a fact that both — and land are the property of the zemindar as such, the two rights are not to be separated.—W. R. Sp. 63.

9. A suit will lie to establish a prescriptive right to irrigation from a running stream, and for damages caused by stoppage of the —.—W. R. Sp. 106.

10. Such a suit is not governed by the limitation prescribed by cl. 2 s. 1 Act XIV of 1859, but by that applicable to suits for rights appertaining to real property and for damage done to such property.—*Ib.* *See also* 17 W. R. 281.

11. The owner of two properties may conduct the rain — of one property through troughs over a — course to the other property.—W. R. Sp. 147.

12. A person has no right to tap another's canal and abstract the — therefrom for his own land, unless he has acquired that right by grant or prescription.—W. R. Sp. 319 (L. R. 96).

13. No presumptions of law in regard to rights of — are known in this country; but proof of ancient reasonable user by recognized means gives the right.—W. R. Sp. 367.

14. A plaintiff may have a prescriptive right of passage in boats, during the rainy season, over certain lands belonging to the defendant, though the general public have no such right of passage and though the channel does not lead to plaintiff's house and is injurious to a tank belonging to defendant.—1 W. R. 217.

15. A riparian owner may deal with the stream as freely as with any other portion of his land, provided he does not sensibly disturb the natural condition of the stream within the limits of other proprietors.—3 W. R. 218.

16. The right to take — is governed by old-established user; no man can open a new conduit to take additional — to the injury of his neighbours.—4 W. R. 28.

17. Object of s. 320 Act XXV of 1861 in disputes concerning use of —.—6 W. R., Cr., 74. *See* 13 W. R., Cr., 51. So also of s. 532 Act X of 1872.—21 W. R., Cr., 15.

18. Using the — of a tank for many years is not sufficient to prove a continuous and uninterrupted user.—8 W. R. 311.

19. Proprietors of a village or estate, through which a — course passes from a river, have the right to make use of that — for irrigation purposes, but only to such extent as will not interfere with similar rights possessed by parties holding land lower down on the same — course.—11 W. R. 254.

20. Where the raising of new dams and opening up of old embankments is found to be prejudicial to the use of the

WATER (*continued*).

— by plaintiff, it is a sufficient finding that damage has been effected.—*Ib.*

21. The right of a riparian proprietor to the — of the stream is not a prescriptive right, but a right naturally incident to his property in the land.—13 W. R. 48.

22. Water falling on A's land and collected in a reservoir there, used to flow into B's land. *Held* that B had no right to the use of the —, and that A was entitled to erect on his own land a bund to prevent the — from flowing on to B's land.—13 W. R. 414.

But where — flows in its natural course from somewhere outside A's land, through it and onwards to other people's land, A is not entitled to stop the flow by an embankment across it unless he can make out some special right to do so; such course is a part of the natural condition of the land, and the flow of the — over it, when it occurs, is a natural incident.—18 W. R. 525. *See also* 26 W. R. 102.

23. Where two parties by agreement in a *butwarra* restricted their rights by the condition that one of them was to have full use of the — in a reservoir the other was held not at liberty to set up, even on his own land, an embankment round the reservoir so as to diminish materially the flow of — into it.—15 W. R. 94.

24. Deprivation of the right to a rise of — is an injury; and a claim to repair a bund for the purpose of securing such right, is not answered by the tender of another bund quite as good.—15 W. R. 216.

25. Where a party enjoying the permissive use of the — of a tank did not use it for 4 years from the date of its excavation, the permission was taken to be revoked.—15 W. R. 308.

26. The proprietor of land on a higher level may claim a right to have the — falling thereon drained by running off over lower land.—20 W. R. 287.

27. In order to maintain an action by a riparian owner upon an infringement of his right to — of a natural stream to irrigate his lands, it is not necessary to show that there has been any subsequent injury consequent upon such infringement.—23 W. R. 230.

28. Where a party has exercised the right of passage of his surplus tank — over the land of another openly and uninterruptedly year by year for upwards of 20 years, a presumption arises that he has obtained the easement as of right.—24 W. R. 228.

29. The bed of a flowing stream may be the property of a private person.—24 W. R. 317.

See Canal.
Churs.
Custom 2.
Damages 24.
Declaratory Decree 26, 36.
Ejectment 20.
Embankment 3, 7.
Julkur.
Jurisdiction 440, 488.
Lakheraj 21.
Limitation (Act IX of 1871) 17.
,, (Reg. II of 1805) 3.
Negligence 8.
Pre-emption 49, 57.
Prescription 11.
Res Judicata 9, 15.
River.
Water-course.
Well.

Water-course.

1. Probability of damage arising to the plaintiff if the defendant is allowed to make a new — is a sufficient ground for action.—Sev. 155.

2. In a suit for recovery of possession and for opening a — (defendant having raised the land and stopped the —), plaintiff's consent to defendant's acts cannot be inferred from the fact of his not having objected.—4 W. R. 107. *See* (*as to acquiescence*) 15 W. R. 401.

3. Such a suit is not "for an interest in immoveable property" and is therefore subject to limitation under cl. 12 s. 1 Act XIV of 1859.—*Ib.* *See also* 24 W. R. 300.

4. Riparian proprietorship of a *natural* — gives no rights whatever over one *artificially* constructed.—6 W. R. 99. *See* 14 W. R. 349.

5. Exposition of the right of discharging the rainfall on one's land through a — over another's, and of the abandonment of such right.—7 W. R. 498. *See* 12 W. R. 519, 20 W. R. 287.

6. Distinction between a *pyne* and an *ahur alung.*—11 W. R. 159.

7. The proprietor of a *pyne* has a right to allow or to deny the use of water flowing through it to other persons unless they have also a clearly defined right enabling them to control the water and convert it to their own use.—14 W. R. 349.

8. In giving judgment for plaintiff in a suit to compel the filling up of a *pyne* which runs over plaintiff's estate and conveys water to defendant's estate, the Court must show how plaintiff's right has been infringed and what defendant is bound to do.—15 W. R. 154.

9. Where a — was for the common benefit of plaintiff and defendant (in fact, joint property), plaintiff, when he found that defendant neglected to keep the — in order, was held entitled to repair it at his own expense and to call upon defendant for contribution.—25 W. R. 170.

See Declaratory Decree 26.
Onus Probandi 212.
Water 4, 5, 11, 19, 22, 23, 26, 28.

Weights and Measures.

Intention is an essential part of the offence of fraudulently using false —.—18 W. R., Cr., 7.

See Measurement 5.

Well.

See Mokurruree Tenure 5.

Whipping.

1. In the case of adults on a first conviction, or in the case of juvenile offenders for a first or any other offence, — can only be *in lieu* of any other punishment.—W. R. Sp., Cr., 38; 1 W. R., Cr., 24; 2 W. R., Cr., 63 (4 R. J. P. J. 563).

2. — may be substituted under s. 2 Act VI of 1864 for any other punishment for the offence of theft in dwelling-house.—3 W. R., Cr., 36.

3. In order to legalize — under Act VI of 1864 in addition to imprisonment in the case of a second conviction, the offence must be the same in both cases.—4 W. R., Cr., 20.

4. A person who has not been "previously convicted" (*vide* s. 4 Act VI of 1864) and is convicted at one time of two or more offences, cannot be sentenced to — for one of those offences *in addition* to imprisonment or fine for the other or others, but may be sentenced to *one* — *in lieu* of all other punishment.—(F. B.) 9 W. R., Cr., 41. *But see* 8 *post.*

5. A person who has been "previously convicted" and if convicted at one time of two or more offences, may be punished with only *one* — *in addition* to any other punishment to which, under s. 46 Act XXV of 1861, he may be liable.—(F. B.) *Ib.* *See also* 14 W. R., Cr., 7.

6. A sentence of — under s. 4 Act VI of 1864 can only be inflicted in addition to other punishment on a second conviction, when the first offence was committed at some time previous to the second conviction, though after the passing of the Penal Code.—12 W. R., Cr., 68.

7. S. 12 Act VI of 1864 refers to the Court by which a case is tried in the first instance, and not to a Court of Appeal.—15 W. R., Cr., 7.

8. Notwithstanding s. 46 Act XXV of 1861, a person convicted at the same time of two or more offences punishable under the Penal Code may in addition to the punish-

WHIPPING (*continued*).

ments prescribed by the Penal Code, be sentenced to — under Act VI of 1864, the latter Act being read as part of the Penal Code and the Code of Criminal Procedure.—(F. B.) 15 W. R., Cr., 89.

9. A sentence of — in addition to imprisonment was held, under s. 310 Act X of 1872, to have become inoperative by lapse of time.—20 W. R., Cr., 72.

10. A sentence of — cannot, with reference to s. 7 Act VI of 1864, be passed on a conviction for theft under s. 379 Penal Code, in addition to transportation for life under s. 75 of the Code, s. 379 only providing for sentences of imprisonment for a term not exceeding 3 years.—21 W. R., Cr., 40.

See Imprisonment.
Punishment 5, 7.

Widow.

See Auction-Purchaser (Execution Sale) 2.
Certificate 8.
Court of Wards 4.
Devastavit 1.
Dower 1.
Hindoo Widow.
Jurisdiction 30.
Limitation 7, 14.
Mahomedan Widow.
Money-Decree 6.
Mookhtar 1.
Reversioner 4, 10.
Widowed Daughter.

Widowed Daughter.

See Hindoo Law (Inheritance and Succession) 4.

Wife.

See Gift 10.
Hindoo Law (Adoption) 19, 40.
,, ,, (Coparcenary) 71.
,, ,, (Inheritance and Succession) 93.
Husband and Wife.
Limitation 22.
Married Woman.
Onus Probandi 5.
Roman Catholic 1.
Streedhun.

Wild Animal.

See Feræ Naturæ.

Will.

1. Construction of a Persian — and of certain words therein relating to real and personal property.—W. R. Sp. 69.

2. The scope and intent of wills, when disputed, must be decided and interpreted by Courts of law, and not by admissions made by unadvised persons through third parties.—W. R. Sp. 336 (L. R. 50).

3. A Hindoo testator, after the death of his widow, gave a moiety of his property to his brother A, and on his death to A's two sons B and C. A died in the lifetime of the testator's widow, and a complete division of all A's property which was held in coparcenary was agreed upon between B and C. B also died in the lifetime of the testator's widow; and on the death of the testator's widow, B's widow claimed his share. *Held* that B and C took A's moiety under the — as tenants in common and that each of them had a vested interest in a one-fourth share though the actual enjoyment was postponed until the death of A's widow; and that the claim of B's widow was not barred by the doctrine of Hindoo law that a widow succeeding as heir to her husband cannot recover property not in the possession of her husband, which doctrine was inapplicable to the case of property in which the husband had a vested interest under a — or deed, though the actual enjoyment thereof was postponed during the lifetime of another.—(P. C.) 7 W. R., P. C., 35 (P. C. R. 172).

4. In this case the Privy Council, looking at the probabilities, declined to reverse a decision of two Courts in India upon a question of mere fact as to the making of a nuncupative — by a Mahomedan of rank.—(P. C.) P. C. R. 229.

5. Mode of construing the — of a Hindoo, with reference to the principle of survivorship in a joint family and the rights of the widow of a deceased co-sharer to her husband's share of the accumulations or increment.—(P. C.) 4 W. R., P. C., 114 (P. C. R. 291). *See also* 9 W. R., P. C., 1; 14 W. R. 315; 19 W. R. 48; (P. C.) 22 W. R. 409; 24 W. R. 395.

6. Power of testamentary disposition by Hindoos in Bengal.—(P. C.) 3 W. R., P. C., 15 (P. C. R. 574); 6 W. R. 101; 9 W. R., P. C., 15.

7. Where the word "house" used in a — was taken to mean the fee and not a life-interest.—1 Hyde 96.

8. A military testament, valid in its inception, may be deprived of its privileges by lapse of time.—1 Hyde 196.

9. The — of a childless Hindoo giving power to adopt a son, though opposed to the interests of the widow and the next heir in reversion, is not inofficious.—1 Hyde 223.

10. Under the Mahomedan law a person cannot devise more than a moiety of his estate to his daughter.—2 W. R. 181.

11. Heirs are not estopped from disputing a — after probate has been taken out.—*Ib.*

12. A *wusseeutnamah* or —, divesting all the property from the next heirs, is illegal under Mahomedan law.—2 W. R., Mis., 49.

13. A Hindoo woman cannot execute a — regarding any property she inherits from her husband or father.—3 W. R. 49.

14. Nuncupative wills.—*See* Gift 46; Roman Catholic 1; 16, 24 *post*.

15. A Hindoo widow has no power to dispose by — of immoveable property inherited by her from her husband.—3 W. R. 105.

16. Under the Hindoo law a nuncupative — is legal.—3 W. R. 138.

17. According to Mahomedan law, a — is valid as against an heir if he affixed his signature to it as a consenting party thereto without undue influence.—4 W. R. 36.

18. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the — that only a restricted interest was intended for him, the *onus* of proving which is on the person alleging it.—4 W. R. 55.

19. A — of a Mahomedan lady devising her property to her nephew *nuslun bad nuslun, buttun bad buttun* (from generation to generation), how to be construed.—4 W. R. 67.

20. A widow, by virtue of the authority given to her by her husband's — under which she adopted a son, discarded him for misbehaviour. *Held* that the validity of the — could not be summarily contested by the adopted son, who, on attaining majority, applied to the Court for the withdrawal of the certificate granted to the widow on the strength of the — and for the grant of a certificate to himself; and that the question between the parties could only be decided by a regular suit.—4 W. R., Mis., 16.

21. Where a British-born subject died leaving assets in Moulmein but none in Calcutta, and a — dated 5th August 1865 (before Act X of 1865 came into force), the executors could not obtain probate or letters of administration with — annexed from the High Court in Bengal.—8 W. R. 3.

22. Letters of administration with copy of — annexed may be equivalent to probate, but neither is *per se* sufficient to prove a — the genuineness of which is contested.—8 W. R. 308.

23. In India no formalities are necessary to the constitution of a valid —; all that is required is that the intention of the testator should be ascertained, whether by word

WILL (*continued*).

of mouth or in writing, clearly and unmistakeably.—8 W. R. 455.

24. He who rests his title on so uncertain a foundation as a nuncupative — or the spoken words of a man since deceased, is bound to allege, as well as to prove, with the utmost precision, the words on which he relies, with every circumstance of time and place.—9 W. R., P. C., 15.

25. Where a — executed and registered by the alleged testator is inofficious, it is essential to enquire into the circumstances of the execution and registration.—10 W. R. 32.

26. The appointment of an infidel executor does not invalidate a Mahomedan's —, and until he is removed and superseded by the Civil Court, all the acts of such an executor, and his dealing with the property under the —, are good and valid.—10 W. R. 185.

27. The bequest by a Mahomedan of more than one-third of his estate without the consent of his heirs, is invalid according to Mahomedan law.—10 W. R. 375, 22 W. R. 400, (P. C.) 26 W. R. 36.

28. Probate may be granted of the — of a Buddhist made after 1st January 1866, but it is not necessary that the — of a Buddhist should be executed according to the formalities required by Act X of 1865.—10 W. R. 417, 11 W. R. 413.

29. A suit was brought by A to recover property in which, on appeal to the Privy Council, two questions arose, viz. whether the property was to pass as divided or undivided property, and whether such property was conveyed away to A's father by a deed of testamentary disposition. The Lower Court had decided only the latter point, and the Privy Council remanded the case for determination of the former point. On a second appeal to the Privy Council, that Committee were about to enter upon the question as to the validity of the testamentary paper, when A gave up the point that the paper was in any sense testamentary in its character, and disclaimed having any title under it as a testamentary devise. Thereupon the Privy Council did not decide that question, but held that a subsequent suit by A, in which he sought to recover the property by setting up a valid will and testament, was a suit instituted without *bona fides*, and could not be allowed to proceed (1) because the nature of the paper was in issue in the former suit, and what was in issue must be taken to have been decided by the judgment; (2) because A, having used the document and abandoned all right to it as a —, could not again use it for a different purpose.—(P. C.) 10 W. R., P. C., 1. *See* 15 W. R. 251.

30. The Recorder's Court has the same power to grant probate of the — of a native of British India as the High Court had before the passing of Act X of 1865, s. 331 of that Act notwithstanding.—11 W. R. 413.

31. The construction and effect of a — must depend on the law of the domicile if that can be ascertained.—(P. C.) 13 W. R., P. C., 41.

32. Where the word "children" was held to include illegitimate children.—(P. C.) *Ib.*

33. Where new acquisitions (purchased estates) were held not as accretions to the original devised estates and as passing with them under the gifts made by the —, but as following the ownership of the purchase-money.—(P. C.) *Ib.*

34. An executor of a — is not obliged in India, as in England, to shed his character of executor before he can appear in the new character of legatee.—13 W. R. 69.

35. By Mahomedan law the consent of heirs to a — must be given after, and not before, the testator's death.—15 W. R. 146.

36. A person who is not the next of kin, and who has no interest in the estate of a testator, has no right to oppose the grant of probate, or to dispute the validity of the —.—15 W. R. 351.

37. Where a plaintiff claims under a — and the Court finds the — not *bonâ fide*, it ought to decide on that and not go into other issues.—17 W. R. 188.

38. Construction of a — in which a Mahomedan testator desired that his moveable estate should not be divided or alienated by any of his heirs, and directed his executor to appropriate the net income according to a schedule annexed to his — among certain specified persons divided into two classes, those who took and those who did not take by inheritance.—17 W. R. 190.

39. A person capable of taking under a — must be such a person as can take a gift *inter vivos*, and must either in fact, or in contemplation of law, be in existence at the death of the testator.—(P. C.) 18 W. R. 359. *See also* 20 W. R. 472.

40. Trusts of various kinds have been recognized and acted on in India in many cases.—(P. C.) *Ib.*

41. Under the guise of an unnecessary trust of inheritance, a testator cannot indirectly create beneficiary estates of a character unauthorized by law, and which could not directly be given without the intervention of the trust.—(P. C.) *Ib.*

42. A trust cannot be said to fail because one of the trustees had renounced or had not acted, where a — distinctly provides for the case of a trustee not acting, and gives a directing power to fill up the number of trustees when required.—(P. C.) *Ib.*

43. Probate of a — executed by a Hindoo in favor of his nephew was granted to the nephew instead of a brother, where the property was of small value and deceased's widow of immature age, and the nephew had been brought up by deceased and was the object of his special affection.—18 W. R. 395.

44. Where a Hindoo, who had two infant sons, made a —, which was drawn up in English and signed by him in Bengalee, in the following terms: "I give, devise, and bequeath unto my wife S L D and her heirs and assignees for ever all my real and personal estates and effects, and do appoint my said wife sole executrix of this my —,"—*Held* that it must be assumed that the — was explained to the testator and that he understood its meaning; that the wife took absolutely all the property of the testator; and that there need not be an express declaration of a desire or intention on the part of a Hindoo to disinherit sons if there is an actual gift to some other person.—(O. J.) 19 W. R. 48.

45. In regard to a — which was to be construed, not according to English law, but according to equity and good conscience, the rule of interpretation was held to be that, unless a contrary intention appeared, the estate given should be considered an absolute one.—19 W. R. 181.

46. The words "on his (devisee's) demise his sons shall get" were held only to describe what the testator thought would really follow from what he had done, and as not affecting the absolute character of the gift.—*Ib.*

47. Where a legatee obtains a decree against an executor who has a beneficial interest under the —, the intention is to make the costs payable, not by the estate of the testatrix, but by the executor himself, and the execution-sale is valid so far only as it conveys his beneficial interest.—(O. J.) 20 W. R. 39.

48. Where the executors under a —, after certain dispositions of the property, are to enjoy what remains, the property is not a mere gift to the executors subject to a charge, but their interest is in the surplus profits.—*Ib.*

49. A — is not invalid under the Hindoo law because the testator was, at the time when he made it, under the erroneous impression that the devisee was the fittest person to confer spiritual benefit upon him; or because it made no provision for the maintenance of the widow of the deceased brother of the testator.—20 W. R. 147.

50. The — of a Hindoo was held invalid under s. 50 Act X of 1865 and s. 2 Act XXI of 1870, because it was attested by only one witness.—20 W. R. 255.

51. In a suit by the heir-at-law to recover immoveable property devised by his father to one B, where *inter alia* plaintiff sought to set aside the — on the ground that the testator had not the power to make any of the devises of realty that it contained, inasmuch as he could not devise ancestral real property, and both parties invoked the opinion of the Court upon the question which was raised by the pleadings and argued,—*Held* that the judgment on it was not *ultra vires* merely because an issue was not framed, which, strictly construed, embraced the whole of it, and that the Court was called upon to decide whether or not the — was operative as to all or any or what portion of the property; also that the Court had power, with the consent of the parties, to substitute for the relief specially sought, viz. the cancellation of the —, the simple declaration that certain deeds of sale and gift sought to be set aside could not affect the ancestral property.—(P. C.) 20 W. R. 377.

52. Where a — is disputed, the proceedings should take as nearly as possible the form of a regular suit according to the provisions of the Code of Civil Procedure, the petitioner

WILL (*continued*).

for probate being the plaintiff, and the opposing party the defendant.—21 W. R. 84.

53. To entitle the executor to a probate, the signature of the testator must be that of a conscious person, and not the result of mere mechanical movement of the hand.—*Ib.*

54. Parties in possession under a —, *i.e.* a voluntary transfer without any consideration except that of family affection, are not thereby bound to pay the debts of the former holder, whether the donee's possession began at the date of the instrument called a —, or after the death of the testator.—21 W. R. 155.

55. Where the first Court decreed a suit for possession of land claimed under a —, the Lower Appellate Court was held to have done right in reversing the decision on the ground that plaintiff had not taken out probate under s. 187 Act X of 1865.—22 W. R. 174.

56. The probate intended by that section, may be taken out by a legatee.—*Ib.*

57. With reference to cl. 3 s. 50 Act X of 1865 and s. 71 Act I of 1872, the mere fact of an attesting witness to a — repudiating his signature does not invalidate the —, if it can be proved by the evidence of other witnesses of a reliable character that he has given false evidence.—22 W. R. 189.

58. Where a — was impeached by the widow of the testator, and the terms of it were contrary to the usual provisions of a Hindoo — and deviating from the Hindoo law of succession, and the application for probate was not made till some years after the testator's death and after the alleged — was said to have been executed,—*Held* that the terms of Act X of 1865 had not been complied with and that the Judge was right in refusing the application.—*Ib.*

59. Construction of a clause in Prosonno Coomar Tagore's — which provided for the cesser of the estate of the persons entitled under the limitations of the — in the event of non-residence in his *boitakhana* house.—(P. C.) 22 W. R. 377.

60. Where an application for probate was unopposed, although a notice in the nature of a citation had been issued to the testator's widow, the Judge was held not justified in rejecting the application merely upon internal evidence contained in the —.—23 W. R. 103.

61. The heirs of a deceased person have a right to insist upon an adverse — being proved in solemn form by the attesting witnesses, without being saddled with the opposite party's costs.—24 W. R. 25.

62. Where a — is contested, the proceedings should take, as nearly as may be, the form of a regular suit as if brought by the party propounding the —; and where a Judge granted probate, it was held to be a serious defect, with reference to s. 38 Act XXIII of 1861 and s. 172 Act VIII of 1859, that he took down only memoranda of the evidence of the witnesses and not their testimony in the language in ordinary use in proceedings before the Court.—24 W. R. 162.

63. Where a — is inofficious in character, it is incumbent on the parties propounding it to prove it not only affirmatively but completely, and by circumstances showing not only that the testator signed the — but that he knew what he was doing.—*Ib.*

64. In all cases where probate of a — is asked for and disputed, the very best testimony available to the parties should be produced before the Court.—24 W. R. 186.

65. Act XII of 1875 does not empower a Judge of the High Court to grant a limited probate extending to goods in another province, after an unlimited grant has already been made before the Act passed, extending only to goods in the province of Bengal.—(O. J.) 24 W. R. 206.

66. By the Mahomedan law no writing is required to make a — valid, and no particular form even of verbal declaration is necessary as long as the intention of the testator is sufficiently ascertained.—(P. C.) 25 W. R. 121.

67. Where a power of attorney executed by a Mahomedan testatrix was put in to show that she directed a *wajib-ul-urz* to be made in respect of a particular mouzah, and there was also verbal evidence to the effect that she did express an intention that the whole of the property should be devised by —, her testamentary disposition was held to take effect as to the whole of her property and not to be limited to the particular mouzah.—(P. C.) *Ib.*

68. The bequests in the — of Major-General Claude Martin, for the discharge and relief of poor debtors detained in prison, having failed by reason of the abolition of imprisonment for debt, the Privy Council held (1) that these gifts were capable of being applied *cy-près* notwithstanding that the residuary bequest was to charity; (2) that, upon the construction of the —, there was not such a necessary inference of intention to be found in the terms and provisions of the — as to raise the implication of a bequest over by the testator of these legacies upon the failure of the particular charities; and (3) that the appellant was not competent under his present petition, which was confined to the claim of a share of the residue as residuary legatee, to open the scheme, which had been settled and confirmed by the High Court, for the *cy-près* application of the fund in dispute on the ground that the appellant was excluded from participation therein.—(P. C.) 26 W. R. 1.

69. A devise to pious uses, which was in such vague terms as to confer the beneficial interest on the executor, was held to be in contravention of the Mahomedan law and invalid without the consent of the heirs.—(P. C.) 26 W. R. 36.

70. A creditor, not of the deceased, but of his next of kin, is not a person interested in the estate of the deceased, and is not entitled to come in and controvert, and oppose the grant of probate of, a — said to have been executed by the deceased.—25 W. R. 489.

See Administration 2.
Ancestral Property 15.
Appeal 64.
Arbitration 96.
Attgurh Raj 2.
Certificate 3, 10, 11, 12, 27, 30, 40, 51, 57, 63, 65, 66, 67, 68, 99, 104, 105, 114, 119, 121.
Court Fees 12, 13, 14.
Court of Wards 8.
Debtor and Creditor 5.
Declaratory Decree 32.
East Indian 1.
Endowment 4.
Evidence 9, 60.
,, (Estoppel) 15.
Executor 1, 3.
Gift 2, 3, 4, 9, 19, 23, 31, 32, 38, 42, 48, 58.
Guardian 4, 23.
Hindoo Law 6.
,, ,, (Adoption) 26, 27, 39, 42, 48, 61, 75, 78.
,, ,, (Coparcenary) 8.
,, Widow 51, 74.
Jurisdiction 65, 493.
Legacy.
Limitation 151.
,, (Act XIV of 1859) 172.
Maintenance 5, 6.
Manager 2, 4, 5.
Mortgage 201, 202.
Parsees 1.
Practice (Execution of Decree) 100.
Right to sue 18.
Self-acquired Property 6.
Sheriff 2.
Small Cause Court 44, 15.
Special Appeal 69, 90.
Streedhun 2, 18.
Succession 2, 4, 5.
Trust 15.

Witchcraft.

See Hurt 6.
Murder 20.

Withdrawal of Complaint.

1. Bribery and other offences punishable under the Penal Code with imprisonment not exceeding 6 months are not triable under Chap. XV Act XXV of 1861, and therefore cannot be withdrawn under s. 271 of the latter Act.—(F. B.) 12 W. R., Cr., 59.

2. The — operates as an acquittal.—19 W. R., Cr., 55.

Under s. 210 Act X of 1872, a complaint, when withdrawn, cannot be again entertained.—25 W. R., Cr., 64.

See **Transfer 4.**

Withdrawal of Suit or Appeal.

1. Where a Judge on appeal allowed plaintiff, under s. 97 Act VIII of 1859, to withdraw the suit,—*Held* that plaintiff was not barred under that section from bringing a second suit, and that the "final judgment" therein referred to must be taken to mean the judgment which the Appellate Court would pass in appeal, and not the judgment passed by the first Court, which, after an appeal had been admitted, could not possibly be the final judgment in the case.—Sev. 538.

2. Where a plaintiff was allowed, under s. 97, to withdraw his suit with leave to bring a fresh suit, and was ordered to pay the defendant his costs, but the order did not in terms make the payment of costs a condition precedent to the liberty to bring a fresh suit, and the plaintiff, pursuant to such leave, instituted another suit but did not pay the costs of the former action, the Court declared itself unable to stay proceedings until the costs of the previous action were paid by plaintiff; and the Court's order of refusal was held in appeal to be an interlocutory order and not open to appeal.—2 Hyde 212.

2*a*. S. 97 is not applicable to suits under Act X of 1859. —W. R. F. B. 47 (1 Hay 347, Marshall 148); 11 W. R. 3, 46. *But see* 7 W. R. 302.

3. S. 97 does not prevent a suitor from instituting a claim for possession and afterwards bringing one for rent. —W. R. Sp. (Act X) 67.

4. The Court will not interfere in appeal with an order requiring plaintiff (upon — under s. 97 Act VIII) to pay defendant's costs.—1 W. R. 322.

5. Order for — under s. 97 how to be framed.—*Ib.*

6. Where High Court allowed withdrawal of an appeal without prejudice to appellant making such application, appeal, or motion as he might think fit.—7 W. R. 39.

7. One of several plaintiffs cannot be allowed to withdraw without the assent of the others.—(F. B.) 9 W. R. 309.

8. An appellant, on the appeal being called, but before the hearing took place, applied to withdraw his case. *Held* that, under s. 37 Act XXIII of 1861, the Appellate Court could allow him to do so, and that, as the appellant had withdrawn from the appeal, the respondent could no longer pursue his objection under s. 348 Act VIII.— 9 W. R. 328, 14 W. R. 210, 23 W. R. 229.

9. A plaintiff has a discretion to withdraw his suit at any time he pleases.—10 W. R. 373.

But a plaintiff may be allowed to withdraw a suit with liberty to bring a fresh suit only in those cases in which the suit fails by reason of some point of form, and not when issue has been joined and plaintiff has failed to produce evidence in support of his claim.—(P. C.) 12 W. R., P. C., 44; 21 W. R. 291.

10. Under s. 37 Act XXIII of 1861, an Appellate Court has power, before pronouncing final judgment, to permit plaintiff to withdraw from the suit with liberty to bring a fresh suit.—14 W. R., O. J., 17.

11. Inability to adduce the evidence of certain records within the time fixed for hearing, was admitted as a reason for — under s. 97 Act VIII.—16 W. R. 100.

12. A Lower Appellate Court has no power to interfere with the discretion of a first Court under s. 97 Act VIII in allowing a plaintiff, at any time before final judgment, to withdraw from the suit with liberty to bring a fresh suit.— 17 W. R. 229.

See **Evidence (Estoppel) 42, 94.**
Fresh Suit 5.
Jurisdiction 282.
Practice (Execution of Decree) 5.
See **Privy Council 67.**
Res Judicata 26, 41.
Special Appeal 57, 96.
Vakalutnamah 2.

Witness.

1. Neglect of a party to appear as a — on plea of rank or otherwise.—W. R. F. B. 54 (1 Hay 379, Marshall 176); 2 W. R. 63; 8 W. R. 453; 12 W. R., P. C., 38; 15 W. R. 338; 17 W. R. 346; 18 W. R. 45, 63.

2. The Court cannot put a party to elect which of several witnesses he will call, where all are material and their evidence bears upon different points in the case.—2 Hay 143 (Marshall 266).

3. Under ss. 170, 355, and 358 Act VIII of 1859 an Appellate Court has power to order the attendance of a respondent as a —, and by s. 37 Act XXIII of 1861 to exercise the same power as the Court of first instance might have done under s. 170.—2 Hay 518.

4. It is a defect in procedure under s. 48 Act II of 1855 not to show a disputed deed to a —, who when in the — box had denied the execution thereof.—Sev. 444.

5. A plaintiff who did not venture to appear in Court and prove his assertion that he could read and write, ought to have been summoned to appear and give his deposition.—*Ib.*

6. Act VIII of 1859 makes no provision for compensation of a — for loss of time, but only for expenses incurred in travelling.—2 Hyde 236.

7. Where an attesting — cannot write himself, but either makes a mark or has his name written for him, the style in which the attestation is executed cannot invalidate the deed.—W. R. Sp. 187.

8. It is not imperative on a Lower Appellate Court to examine any number of witnesses a suitor may ask to have examined, and the Court's refusal to do so is not a ground for special appeal.—W. R. Sp. 249. *But see* 17, 29 *post.*

9. Where witnesses are discharged after being long kept in attendance, and the defendants are then verbally ordered to procure their attendance, the failure of the witnesses to appear cannot warrant the Court to decide the case in their absence.—W. R. Sp. (Act X) 88 (3 R. J. P. J. 15).

10. A Nazir's report of service of summons, or of issue of proclamation, is not legal evidence on which to punish a — failing to attend a Court of Justice when duly summoned.—W. R. Sp., Mis., 9.

11. The amount of fine that can be imposed by law on a — evading process is limited to 1,000Rs.—*Ib.*

12. In every Sessions trial, no matter how often the case has been before the Court, each — must be examined *de novo*, as if the case were entirely new and the — had not been examined before.—W. R. Sp., Cr., 1 (2 R. J. P. J. 32); W. R. Sp., Cr., 13, 32, 38.

13. To read to a — his deposition on a former trial is not an examination of the — in the presence of the accused. —*Ib. See* 8 W. R., Cr., 87.

14. A memorandum by a Judge that certain witnesses had deposed the same as the former witnesses is not in accordance with the requirements of s. 195 Act XXV of 1861.—W. R. Sp., Cr., 18.

15. Danger of altogether discrediting a native — deposing *vivâ voce* by reason of the necessity imposed on the Court to sift the evidence of such — with great minuteness and care.—(P. C.) 7 W. R., P. C., 73 (P. C. R. 216).

16. Where a Court ought not to refuse an application under ss. 159 and 168 Act VIII to compel attendance of absconding —.—1 W. R. 25; 5 W. R. (Act X) 6. *See also* 9 W. R. 359.

17. Refusal of a Court to take the evidence of a — when and under what circumstances unjustifiable.—2 W. R. 169; 6 W. R. (Act X) 83.

And when a ground of special appeal.—14 W. R. 419.

18. Effect of an *a priori* consent to abide by the testimony of a certain —. Proper purpose of an application for the examination of such a —.—2 W. R. 253.

19. Right of prisoner to examine and cross-examine witnesses.—2 W. R., Cr., 6; 3 W. R., Cr., 21, 29, 35; 5 W. R., Cr., 65; 10 W. R., Cr., 1, 25, 46; 12 W. R., Cr., 75, 77; 13 W. R., Cr., 1; 15 W. R., Cr., 7, 39, 87; 17 W. R., Cr., 51; 18 W. R., Cr., 20; 19 W. R., Cr., 53; 21 W. R., Cr., 29;

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22 W. R., Cr., 14, 44; 24 W. R., Cr., 18, 22, 54, 60; 25 W. R., Cr., 32, 48.

20. A Court should not refuse, on the application of a party, to enforce the attendance of recusant witnesses by attachment and fine.—3 W. R. 21, 97, (Act X) 150; 6 W. R. 14. *But see* 40 *post.*

21. A Court is not bound, on the mere statement of a party that he has more witnesses, to issue a warrant for their apprehension.—5 W. R. 222.

22. On an application to enforce the attendance of a — a Court is bound to pass some definite order.—*Ib.*

23. Case of recusant witnesses who were ordered to be proceeded against under s. 168 Act VIII, and also tried by the Criminal authorities under the Penal Code.—5 W. R. (Act X) 49.

24. No action for the expenses of a — will lie. Explanation of the manner of providing for such expenses. —5 W. R., S. C. C., 6.

25. Before a plaintiff is entitled to recover any damages from a defaulting — in a former case, the *onus* is on plaintiff to prove that he is endangered by defendant's default. 5 W. R., S. C. C., 18.

26. A —, who is not a Hindoo or Mahomedan, ought to be sworn, and not examined under the provisions of Act V of 1840.—5 W. R., Cr., 65.

27. It is not the business of a Court to determine what witnesses should be examined; the selection must be made by the parties themselves.—6 W. R. 231.

28. A Court is not bound to issue a proclamation against an absent — in a case where it was not satisfied that the — was material and had really absconded to avoid attendance.—6 W. R. 235.

29. As a general rule, all the witnesses brought forward by a party should be examined; but when an objection is made in special appeal that the Judge below has omitted to examine certain witnesses, it ought to be shown that their evidence would have been material.—6 W. R. 324. *See also* 22 W. R. 296.

As to the general rule above stated.—8 W. R. 346, 12 W. R. 229, 17 W. R. 172.

30. A Magistrate is not bound, under s. 191 Act XXV of 1861, to enforce the attendance of a — by warrant, except on proof of due service of summons.—7 W. R., Cr., 37.

31. Evidence of accomplices.—*See* Evidence (Corroborative) 2.

32. The affixing of a proclamation under s. 159 Act VIII to the *mal* cutcherry of an absconding — without proof of attempt at personal service of summons under ss. 155 and 156, was held to be no legal service rendering him punishable for contempt under s. 174 Penal Code.—7 W. R., Cr., 58.

33. Witnesses are to be weighed, not numbered.— 8 W. R. 267.

34. Under s. 159 Act VIII the Judge has a discretion as to the issue of proclamation, etc., regarding an absconding —, but should show that he exercised a reasonable discretion.—8 W. R. 505, 13 W. R. 116. *See also* 15 W. R. 176.

35. The omission of a Magistrate to attach a memorandum to the evidence of a — taken down in English as required by s. 199 Act XXV of 1861, was held to be an error in law by which the accused was materially prejudiced.—8 W. R., Cr., 63. *But see* 13 W. R., Cr., 7, 17.

36. Under s. 66 Act X a Court is bound to summon a — on the application of a party.—9 W. R. 127.

37. Under s. 151 Act VIII (extended to Revenue Courts by s. 67 Act X), the party is not bound to pay into Court the expenses of a — until the Court has fixed what is reasonable.—*Ib.*

38. Judge as —.—*See* Judgment 11; Practice (Criminal Trials) 34.

39. A Judge may refuse to summon a plaintiff as a —, and that discretion will not be interfered with in special appeal unless shown to be exercised illegally.—10 W. R. 134. *See* 7 W. R. 147.

40. The Court cannot fine a — for absconding or keeping out of the way to avoid service of summons; and if such fine is inflicted, there is a right of appeal under s. 365 Act VIII.—10 W. R. 237.

41. Evidence of single —.—*See* Evidence (Oral) 4, 16; False Evidence 41.

42. The general duties of the Lower Courts in connection with the examination of witnesses pointed out.— 10 W. R. 280. *See also* 11 W. R. 99.

43. A party who calls a — to give testimony on his behalf is not necessarily bound by the evidence which that — gives.—10 W. R. 469.

44. A prisoner has a right to be asked if he has any — to call, notwithstanding that he is tried with others who are so asked.—10 W. R., Cr., 7. *But see* 11 W. R. Cr., 15.

45. In a case under Chapter XV Act XXV of 1861, parties should either bring their own witnesses with them, or ask the Magistrate to summon any — they may require. 10 W. R., Cr., 16.

46. The terms of s. 266 Act XXV apparently suppose that in cases under Chapter XV the witnesses for the defence should appear voluntarily and accompany the accused.—10 W. R., Cr., 36, 16 W. R., Cr., 21.

47. Cross-examination of — in Civil cases.—11 W. R. 110, 468.

48. A Lower Appellate Court does right in refusing to summon witnesses whom the first Court neither was asked, nor refused, to hear.—11 W. R. 289.

49. A party complaining in special appeal of the first Court's refusal to summon witnesses, must show that he insisted on his right at every stage of the case, both in the first and Lower Appellate Courts.—11 W. R. 418. *See also* 22 W. R. 296.

50. A plaintiff may, at any stage of a case before hearing, apply for summons of witnesses, irrespective of the number of applications already made; and the Court must comply with such application if any time be left before the hearing.—*Ib.*

So also a defendant.—22 W. R. 296.

The above ruling applies as well to a commission to examine — as to a summons to a —.—15 W. R. 447.

51. The fact of a — not having been named in the plaintiff's list of witnesses, is no ground for refusing to examine him when produced.—12 W. R. 455.

52. A Magistrate has no authority to issue simultaneously a summons and a warrant against a —, nor can he issue a warrant under s. 188 Act XXV of 1861 unless he has reason to believe that the — will not attend in obedience to a summons.—12 W. R., Cr., 18. *See also* 13 W. R., Cr., 1.

53. Evidence of deceased —.—*See* Evidence 76.

54. It is the duty of a plaintiff or defendant to tender such witnesses as he considers necessary to prove his case, notwithstanding the report of the Nazir that such and such witnesses are in attendance.—13 W. R. 185.

55. A Judge cannot throw out the evidence of a defendant's witnesses in a civil action, because they were found untrustworthy when examined on a charge against the same defendant in a criminal case.—13 W. R. 226.

56. Under s. 227 Act XXV of 1861, a Magistrate is bound, subject to s. 228, to summon the witnesses to appear before the Sessions upon the committal of an accused, s. 207 notwithstanding.—13 W. R., Cr., 1; 16 W. R., Cr., 14.

57. A — when under *examination-in-chief* before the Court of Sessions should not have his attention directed to his deposition before the Magistrate. He may under s. 23 Act II of 1855 be *cross-examined* as to previous statements made by him in writing, when his attention may be drawn to the parts of the former writing which are to be used for the purpose of contradicting him.—13 W. R., Cr., 18.

58. Under s. 262 Act XXV of 1861, a Magistrate has a discretion in issuing a summons for a — who is likely to give material evidence on behalf of the accused.—13 W. R., Cr., 63; 14 W. R., Cr., 76.

59. Under s. 266 a Magistrate is bound to examine all the witnesses whom the accused may produce for his defence.—*Ib.* *See also* 15 W. R., Cr., 34.

60. The circumstance of a — being a servant or a dependant of the plaintiff, does not disentitle him to credit.—14 W. R. 23.

61. A Court has no power to refuse to summon witnesses when expressly requested by a party to do so, unless there be a clear indication of a vexatious desire to obstruct the course of justice.—14 W. R. 66.

62. A Lower Court was held to be justified in rejecting a plaintiff's application for the examination of witnesses after his case had been closed and defendant's case had almost come to a termination.—14 W. R. 493.

63. Before the deposition of a — taken before a Magistrate can be used in appeal, it should be shown either in

WITNESS (*continued*).

the deposition or elsewhere that it was read over or interpreted to him.—14 W. R., Cr., 13.

64. After the list of witnesses has been filed and the *tullabana* paid, the Court's officers are responsible for the service and return of notice.—15 W. R. 88.

65. A — is not guilty of an offence under s. 228 Penal Code for giving inconsistent evidence and giving evidence reluctantly and taking up the time of the Court.—15 W. R., Cr., 5.

66. Cross-examination of witnesses for the defence.—15 W. R., Cr., 23.

67. S. 34 Act II of 1855 regarding cross-examination as to previous written statements, explained.—*Ib.*

68. The deposition of a — should be recorded in the first, and not in the third, person.—16 W. R., Cr., 36.

69. There is no necessity under s. 198 Act XXV of 1861 for the deposition of a — to be interpreted to him by a sworn interpreter.—16 W. R., Cr., 71.

70. The reception or rejection of evidence should not depend upon the caste of the —.—17 W. R. 161. *See* 25 W. R. 530.

71. Prisoners should name their witnesses at the time of commitment.—17 W. R., Cr., 58.

72. What is or is not a lawful excuse for the non-attendance of a party summoned to attend as a —, must depend on the circumstances of each case.—18 W. R. 63.

73. A person who swears that he was present at the execution of an instrument, is not a secondary — merely because he was not a subscribing —.—18 W. R 245.

74. It is no doubt a legitimate objection to a man's credit that he is a professional —; but to state broadly and generally that a — has given evidence in other cases and therefore becomes unworthy of credit, can only tend to increase that indisposition of respectable persons to come into Court as witnesses, which is one of the social evils of India.—(P. C.) 18 W. R. 285.

75. Where witnesses come into Court to prove the whole case made by the plaintiffs, and are shown to have come to prove a case false in its material features, much reliance cannot be placed on their evidence as to any particular questions in the cause.—(P. C.) 18 W. R. 523.

76. Where petitioner was charged with the theft of certain money found in his house and acquitted, and after proclamation made, no one appeared to claim the money; whereupon petitioner preferred his claim and asked the Magistrate to summon certain witnesses, but the Magistrate refused to do so and disallowed his claim,—*Held* that the Magistrate was bound to summon the witnesses.—18 W. R., Cr., 5.

77. A — ought to be allowed on cross-examination to qualify or correct any statement which he has made in his examination-in-chief.—18 W. R., Cr., 57.

78. People of rank and wealth, when summoned as — to a distance, are entitled to travelling and other expenses suitable to their circumstances.—19 W. R. 78.

79. Where an applicant for a certificate to collect the debts of a deceased person's estate, was summoned to attend as a — and was absent without good cause, his application was held rightly rejected under s. 170 Act VIII.—19 W. R. 183.

80. No appeal lies to the Sessions Court from the order of a Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross-examination; but the order is such an error as can only be corrected by the High Court under its powers of superintendence and revision.—19 W. R., Cr., 53.

81. When the deposition of an absent — is admitted under s. 33 Act I of 1872, the ground for its admission should be stated fully and clearly, and there should be evidence to show that he could not have been produced and that the accused had an opportunity of cross-examining him at the time the deposition was given.—20 W. R., Cr., 69; 21 W. R., Cr., 12, 56.

82. The above section does not apply to the deposition of a — in a former suit, which is sought to be used against him in a subsequent suit in which he is a defendant, not as evidence between the parties, but as an admission against himself.—21 W. R. 414.

83. In order to render the deposition of a — before the Magistrate admissible in evidence under s. 249 Act X of 1872, it must have been duly taken by the Magistrate in the presence of the accused, and must be certified by the Magistrate so as to afford *primâ facie* evidence under s. 80 Act I of 1872 of the circumstances mentioned in it.—21 W. R., Cr., 5.

84. The discretion conferred by the above section should be exercised upon substantial materials rightly before the Court and not upon mere speculation or conjecture.—21 W. R., Cr., 49.

85. The deposition taken in English by the Magistrate of what a — said in Hindoostanee was admitted as a proper deposition, and the memorandum endorsed upon it was taken, under s. 80 Act I of 1872, as evidence of the facts therein mentioned.—22 W. R., Cr., 2.

86. Under s. 363 Act X of 1872, a prisoner is entitled as a matter of right to have any witnesses named in the list which he delivers to the Magistrate, summoned and examined.—23 W. R., Cr., 56.

87. To maintain an action under s. 26 Act XIX of 1853, for not attending as a —, it is necessary that the summons to attend should have been personally delivered.—24 W. R. 72.

88. Undue delay in applying for process for summoning witnesses was held to be a good ground for the Court's refusal to entertain the application.—25 W. R. 71.

89. Evidence of eye-witness.—*See* Murder 32.

90. Copy of deposition of witness.—*See* Evidence 6.

See Absconding Offender 12, 13.
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,, (Review) 58, 99.
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Special Appeal 48, 63, 92, 94, 104, 115, 160.
Summary Trial 6.
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Vendor and Purchaser 48, 63.
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See Acquiescence 2.
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,, Widow.
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,, Widow.
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Work and Labor Done.

See Joinder of Causes of Action 2.
Limitation 49.

Wrecks.

See Salvage.
Timber 2, 3.

Writ.

See Elegit.
Fieri Facias.

Written Statement.

1. The admission of written statements on various dates, unless called for by the Court, is contrary to the provisions of ss. 120 and 122 Act VIII.—W. R. Sp. 44.

2. A — under Act VIII is required to set forth a full and true narrative of the facts of the case, and a party cannot be allowed any discretion as to whether he will state or withhold a fact of such importance as the execution of a receipt for the money sued for.—1 Hyde 30.

3. A — must be prepared with great care and deliberation, so as to dispense altogether with parol evidence.—1 Hyde 147.

4. In the event of a defendant neglecting to furnish a —, the Court will examine him as to the grounds of his defence; and should it appear desirable that a — should be put in, the case will be adjourned for that purpose at the expense of the defaulting party.—2 Hyde 89.

5. Verification of — not provided for by Act X.—1 W. R. 132 (3 R. J. P. J. 220).

6. Omission in first Court to obtain such verification is no ground for throwing out an appeal.—*Ib.*

7. Verification of paper of exceptions to plaintiff's —.—1 W. R., Mis., 6.

8. Reasonable time should be given to a defendant to file his —.—5 W. R. (Act X) 39.

9. Plaints and — should be subscribed and verified by the parties in person, without regard to rank or station, except for good cause shown.—6 W. R. 213.

10. According to s. 123 Act VIII, a party making a — may, without incurring the penalties of perjury, insert in the — in the form of direct allegation any fact whatever which he hopes to be able to prove at the trial and which upon the merest rumour he believes to be true.—7 W. R. 493.

11. *Quære.* Whether under the above circumstances a —, even when verified, is evidence in the cause.—*Ib.*

12. The doctrine of admission by non-traverse is not applicable to a — filed under Act X.—9 W. R. 85.

13. A Court was held not to have done wrong in admitting a supplemental — which it had called for under s. 122 Act VIII and which did not add to or vary the plaintiff's claim.—11 W. R. 71. *See also* 22 W. R. 377.

14. Where a — was admitted on the record without verification,—*Held* that it was the business of the Court to take notice of the allegations which it contained, and to frame issues accordingly.—13 W. R. 342.

See Error 4.
Evidence 10, 34.
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Possession 8.
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Right of Property 5.
Sale Law (Act XI of 1859) 14.
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Trespasser.

Wrongful Confinement.

1. According to s. 348 Penal Code, — cannot be punished with fine only, but with imprisonment also.—5 W. R., Cr., 5.

2. Amends cannot be awarded in a case of —.—7 W. R., Cr., 11; 17 W. R., Cr., 1.

3. A Police Officer is liable to be punished for — for re-arresting a person, who has already been sent up for trial and discharged by the Magistrate, and for sending him up for trial again on the same charge without fresh material.—19 W. R., Cr., 27.

See Charge 1.
Detention.
Discharge 5.

Wrongful Restraint.

1. Where a Police Officer refused to let a person go home until he had given bail, he was held guilty of — under s. 339 Penal Code.—10 W. R., Cr., 20.

2. Distinction between — and theft.—10 W. R., Cr., 35.

3. Where a Police Officer, though guilty of excessive exercise of power, was held not guilty of —.—24 W. R., Cr., 51.

See Compounding 2.
House Trespass 1.

Wrongs and Remedies.

1. Wrongs committed by a deceased person survive to his heirs. Act XII of 1855 only relates to — which do not survive to the representatives of a deceased person.—1 W. R. 251.

2. Reversal of Magistrate's orders in civil cases.—1 W. R., Cr., 25.

3. Injuries to sub-soil.—*See* Damages 50; Encroachment 3.

4. In actions of wrong, not only those who commit the wrong are liable, but those who abet the tortious acts are equally liable.—16 W. R. 240.

5. A plaintiff may ask for any remedy which the Court thinks proper under the facts disclosed in the plaint and established by the evidence; and a mistake in asking for a particular remedy will not debar him from some other similar remedy provided it requires no change in the facts.—21 W. R. 8.

6. A plaintiff proving a wrong done to him, though not exactly to the extent of which he complains, is entitled to relief though not to the extent or on the ground on which he asks it.—22 W. R. 2.

7. A plaintiff whose right has been invaded is entitled to a remedy whether any damage has accrued to him or not.—24 W. R. 97.

8. It is not an actionable wrong to dissuade a tenant from paying his rent to his landlord, who may recover them by law.—25 W. R. 230.

See Building 3.
Damages 54, 65, 94.
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Practice (Attachment) 28.
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Wrongful Confinement.
,, Restraint.

Wuqf Property.

See Certificate 68.
Endowment 5, 6, 8, 14, 36, 51, 52, 53, 54, 55.

Zemindar.

1. Where money was borrowed to pay the revenue due from a zemindaree and paid to the Government on that account, the bond given by the vakeels and managers of the zemindaree to the trustee for the lenders in the English form for the purpose of enabling them to enforce the personal engagements of the vakeels and managers in the Supreme Court, was held not to deprive the lenders of their right, under the law prevailing among the natives in matters of contract, to sue the — in the Courts of the Mofussil.—(P. C.) 5 W. R., P. C., 72 (P. C. R. 8).

2. There was nothing in the laws of 1781 and 1787 (repealed by the laws of 1796) which made it illegal for a — to contract a debt, or for any other native to take an obligation from a —, without the consent of the Officers of Revenue; but such obligation, if founded on a valuable consideration, would be equally binding upon the conscience of the —, and the demand and the payment would be equally legal as if such consent had been obtained and registered, though no Court of justice might have jurisdiction to enforce the right.—*Ib.*

3. Where a — devised the whole of his zemindaree to his eldest son subject to the payment of certain fixed stipends to each of his other children, although the settlement upon the younger children was originally a fair one, yet in consequence of events which had subsequently occurred it was held that there ought to be a reduction in the stipends.—(P. C.) 5 W. R., P. C., 99 (P. C. R. 24).

4. A — is liable to more than nominal damages if he restrains the persons of his officers, nor can he eject them from their houses after long possession by them, without clear proof of title on his part.—(P. C.) 6 W. R., P. C., 13 (P. C. R. 112).

5. A — had no power, before the Permanent Settlement, to grant a rent-free tenure or a tenure at a less rent than the share of the produce payable to Government for revenue; nor had he power to grant jagheers.—6 W. R. 121. *See* 18 W. R. 321.

6. A — is competent to grant a tenancy to one person over the head of another, without interfering with the legal rights of that other.—6 W. R. 122.

7. Zemindaree rights.—*See* Auction-Purchaser (Revenue Sale), 23; Declaratory Decree 39; Jurisdiction 175; Limitation 218; Putnee Talook 115; Set-off 16; Talook 1, 2.

8. The right of a — to hold lands in his own hands, and the right to grant them out to ryots or in *putnee* or in *ijara* or in any other tenure, are not different rights, but different modes of enjoying the same right, viz. the right of ownership.—14 W. R. 168.

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Zemindaree Dak.

1. Where the terms of a contract made, while s. 10 Reg. XX of 1817 was in force, between a zemindar and his putnee lessees, clearly imposed on the latter the charge of the maintenance of the —, this liability was held not affected by the subsequent repeal of the Regulation by Act VIII of 1862 (B. C.).—3 W. R., S. C. C., 17 (S. C. C. 154), 6 W. R. 100, 8 W. R. 45.

2. Act VIII of 1862 (B. C.) does not relieve putneedars from their liability under the old laws of paying the — charges.—4 W. R. 6.

3. A suit for such charges is not cognizable under Act X. —6 W. R. (Act X) 31.

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Zur-i-peshgee Lease.

1. A zemindar, after he had granted a —, collected the rents from the ryots. *Held* (1) that the lessee was entitled to treat the rents so received as a payment of rent under the lease: (2) that the lessee was entitled to recover from the zemindar the amounts of rents so received in excess of the rent due under the lease; (3) that a suit to recover such excess was properly instituted before the Collector.—Marshall 655.

2. A Ticca — cannot be set aside during its currency, on proof that the money originally advanced has been realized; nor, after expiry of the term, without proof of such payment. The correct way of making up the account is to apply the yearly proceeds first to the payment of interest, and any balance to the reduction of the principal. The interest in the second year will be calculated on the reduced principal.—L. R. 163.

3. The grant of a — is in itself not a violation of an agreement which only forbids absolute and permanent alienation by sale or gift or such like.—Sev. 11.

4. Where a — expressly empowered the lessor to repay the money advanced, and redeem the property at any time within the term,—*Held* that, unless the condition for that purpose was construed as providing for the repayment of the principal and interest only, the mortgage would be contrary to the provisions of ss. 9 and 10 Reg. XV of 1793 and therefore void on the ground of usury.—Sev. 436.

5. A zur-i-peshgeedar is entitled as against purchasers from the grantor of his — to retain the whole property pledged to him until the whole of his debt is paid; it being optional with him to relinquish a portion on receiving part payment.—W. R. Sp. 260 (L. R. 37), 6 W. R. 122.

6. A zur-i-peshgeedar cannot compel his lessors to pay rent when both he and they are evicted by the zemindar.—1 W. R. 1.

7. A — may be cancelled on proof of discharge of advance with interest from the usufruct, or on payment of the money in cash. The purchaser of the proprietary rights in a — is not barred from suing to redeem, because he or those through whom he claims did not sue for an account within twelve years from expiry of term, or from discharge of the debt by the usufruct.—1 W. R. 7.

8. A — which recites that the lessee shall not sub-let and that, if he does so, such lease shall be void, but does not provide for the cancelment of the — on breach of any of its conditions, cannot be set aside because of the act of the zur-i-peshgeedar creating a sub-lease.—1 W. R. 52 (3 R. J. P. J. 164).

9. A suit to cancel a — does not lie in the Revenue Court, even though it be a condition of the lease that some rent be paid.—*Ib.* *See also* 8 W. R. 310.

10. In a suit for possession of tanks mortgaged by a —, the value of fish not delivered by the mortgagee as agreed is to be debited against him.—1 W. R. 144.

11. A suit lies for the balance of rents under a —.—1 W. R. 361.

12. Form of decretal order in such a case.—*Ib.*

13. Where a — is essentially in the nature of an usufructuary mortgage, no arrangement between proprietor and lessee can alter the essential character of the deed or relieve the mortgagee from the liability of rendering an account.—4 W. R. 103, 6 W. R. 7. *See* 12 W. R. 215.

14. A mortgagor under a — can sue to recover possession of his lands before the expiry of the term fixed by the lease, on the ground that the mortgage-debt has been satisfied by the mortgagee's receipts while in possession. —6 W. R. 7.

15. Although, in the case of joint family property, it may not be necessary for the lender of money upon — to see to the application of it, it is necessary for him to make due enquiry as to the necessity to borrow.—6 W. R. 193.

16. The estate in dispute was mortgaged under a — to defendant, who, having been evicted by the mortgagor, sued and obtained a decree for possession and mesne profits (the latter to be assessed in execution). He never obtained possession under the decree, but recovered mesne profits by execution. Plaintiffs, claiming separate shares in the entire estate as purchasers from the mortgagors subsequent to the mortgage, sued separately each to redeem his own share upon payment of a proportional share of the mortgage-money. *Held* that plaintiffs, as representing the original mortgagor, were entitled to redeem, but that as the property was of an entire estate, neither of them could redeem except upon payment of less than the full amount of the mortgage-money; and that the defendant having been wrongfully dispossessed, was not bound to account for the mesne profits recovered under his decree, the mesne profits or damages so recovered being different from the usufruct enjoyed by a mortgagee.—(F. B.) 6 W. R. 240.

17. A suit for possession on a — is cognizable only in the Civil Court.—8 W. R. 301.

18. A decree-holder paying the debt due by his judgment-debtor to the zur-i-peshgeedar in possession, and realizing the rents, cannot demand mesne profits from the judgment-debtor for the same period.—10 W. R. 390.

29. Where money is borrowed on security of a —, the fact of there being a reserved rent does not alter the essential character of the arrangement as an usufructuary mortgage.—12 W. R. 215.

30. A suit for rent reserved on land let out on a — should be brought in the Civil Court, even where the remedy sought by plaintiff involves different jurisdictions.—*Ib.*

31. Where a zur-i-peshgeedar abandons his right to possession under his lease and sues to recover the money advanced and obtains a decree which gives him no specific remedy against the property leased to him, his lease must be held to have terminated.—15 W. R. 313.

32. In a — the words "after the expiry of the term it will be competent to me (the mortgagor) in the month of

ZUR-I-PESHGEE LEASE (*continued*).

Jeith of any year I can, to pay the — and cancel the lease," were held to bar re-entry in the middle of any year, but to contain no undertaking by the mortagagee to hold on until it suited the mortgagor to pay him off.—17 W. R. 211.

33. Where plaintiff obtained for a consideration a — which contained an undertaking that defendant would pay back his money with interest and profits if his interest were interfered with, and such interference did take place, and the Lower Appellate Court decreed the original money with interest and mesne profits for the unexpired portion of the lease,—*Held* that mesne profits should not have been awarded.—19 W. R. 424.

34. Where a lessee makes default in payment of rent, and the lessor under the terms of the — has a right to take *seer* possession, but sues to have the lease cancelled without praying for the defendant's ejectment, his omission to sue for ejectment does not deprive him of the right to have the lease cancelled.—21 W. R. 49.

35. Where plaintiff who was in possession of a lease under a — was ejected by defendants other than defendant No. 5 under color of their having bought the right, title, and interest of No. 5 at an auction sale, and sued to recover from the defendants jointly the principal secured by the — with interest,—*Held* that the defendants other than No. 5, not being privy to the contract, were not liable to be called on to satisfy its terms, and that the suit should have been for recovery either of possession or damages.—22 W. R. 41.

36. H S executed a deed of sale in favor of N and R in respect of several properties, some of which had been mortgaged to N under a —. Notwithstanding this sale, H S again sold the same properties to B. Upon this N and R brought a suit to have their rights upheld against B, which was eventually decided by arbitrators whose award was that the property should be equally divided between R and B. After this R paid off half the *zur-i-peshgee* debt due to N; but B refused to do so, whereupon N sued H S and B to recover the moiety still due with interest. B pleaded that plaintiff was not entitled to maintain the suit inasmuch as he had, while in possession of all the mouzahs mortgaged to him, allowed some of them to be sold for arrears of Government revenue, and as he was still in possession of the rest,—*Held* that, if the mouzahs when sold were in possession of B and were so sold on account of his laches, then N would be entitled to maintain the action notwithstanding his possession of the remainder, because it would be clear that by B's act the value of the security had been diminished.—24 W. R. 17.

37. In a suit to recover money lent upon a — and for the sale of the property leased of which plaintiff had been forcibly dispossessed by defendant,—*Held* that as by the terms of the deed the only lien which plaintiff had acquired over the property was to retain possession as lessee until the money lent was paid off, he had no right to sue for the sale of the property; and that the suit being for money lent, and the lease not being a registered document, the limitation of three years applied.—24 W. R. 426.

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